See # 724 for add'l brief

# TRANSCRIPT OF RECORD

## Supreme Court of the United States

**OCTOBER TERM, 1936**

## No. 797

ALBERT A. CARMICHAEL, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE STATE OF ALABAMA, ET AL., APPELLANTS,

*vs.*

GULF STATES PAPER CORPORATION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA

**FILED MARCH 10, 1937.**

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[fol. 1]

**IN UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA**

In Equity

GULF STATES PAPER CORPORATION, a Corporation, Plaintiff,

vs.

ALBERT A. CARMICHAEL, Individually and as Attorney General of the State of Alabama, et al, Defendants

AMENDED BILL OF COMPLAINT—Filed November 6, 1936

And now comes the plaintiff and by leave of court first had and obtained, amends the original bill of complaint filed herein and the prayer thereof by striking out the entire original bill of complaint and substituting in lieu thereof the following:

To the Honorable the Judge of the District Court of the United States for the Middle District of Alabama, Sitting in Equity:

The amended bill of complaint of Gulf States Paper Corporation, a corporation of the State of Delaware, respectfully represents:

(1) This suit is instituted on behalf of the plaintiff and all other employers of labor within the State of Alabama who are subjected by its terms to the provisions of an Act of the Legislature of Alabama approved September 14, 1935, known as the Alabama Unemployment Compensation Law, as amended *, who may become parties plaintiff hereto or be permitted to intervene herein. Plaintiff is and since the year 1928 has been a corporation of the State of Delaware duly qualified to transact business within the State of Alabama, and engaged in the manufacture of kraft paper at an extensive plant located in Tuscaloosa County, Ala-

* Act No. 447 (S. 395), Acts 1935, Reg. Sess., p. 950, as amended (1) by Act No. 156 (H. 204), approved April 21, 1936, Acts, Extra Sess. 1936, p. 176; (2) by Act No. 194 (S. 125), ib., p. 225, approved April 21, 1936; and (3) by Act No. 195 (S. 126), ib., p. 228, approved April 21, 1936.

bama, owned by plaintiff. Plaintiff has been in substantially continuous operation of its said business within the State of Alabama for more than eight years last past, including the entire period of the general depression initiated in 1929.

[fol. 2] (2) The defendant Albert A. Carmichael is the Attorney General of Alabama. The defendant Jacob L. Kaufman is the Chairman and a member of, and the defendants Lucien C. Brown and James A. Lipscomb are the associate members of the Alabama Unemployment Compensation Commission (hereinafter referred to as the Commission) established under color of said Unemployment Compensation Law. All the defendants are officials of the State of Alabama charged with the administration and enforcement of said Law. All the defendants are citizens and residents of the State of Alabama and either reside in or, as such officials as aforesaid, maintain their respective offices for the conduct of the business of the State of Alabama with which they are charged in the City of Montgomery, Montgomery County, Alabama. Each of the defendants is over the age of twenty-one years.

(3) By Act Public No. 271, 74th Congress (H. R. 7260), approved August 14, 1935, the Congress of the United States adopted an Act called the Federal Social Security Act.

Titles III and IX of said Social Security Act relate to grants to states for unemployment compensation administration, and to a so-called tax on employers of eight or more employees. Said titles constitute a plan or program "to encourage the passage of State unemployment compensation laws," was recommended to Congress by the President for that purpose (January 17, 1935; June 8, 1934), was reported favorably (H. R. 7260, Sen.: May 13, 1935, Calendar day, May 20) and enacted by the Congress with that end in view, and has been publicized and administered by the Federal board created by the Act to administer it as enacted for that objective.

[fol. 3] (4) In accordance with the stimulation upon the States inherent in the Social Security Act, the Legislature of Alabama adopted, without previous social or economic investigation as to the problem in Alabama or public hearing of any character, by the most expeditious procedure by

which legislation may be enacted, the Alabama Unemployment Compensation Law, approved September 14, 1935, and amended as aforesaid. The Act as amended formally acknowledged (Acts, Ex. Sess. 1936, at p. 178, 180) the design of the federal Act "to coordinate this State and its institutions with the plans and purposes of the Federal Government as expressed in said Security Act," incorporated in the State Law the conditions laid down in the Federal Act as conditions to federal aid and to the offset credit against the Federal employer tax prescribed by the Social Security Act and, by Section 5½ (of Act No. 156, H. 204, approved April 21, 1936, Acts 1936, at p. 180), provided that in the event that the State aid (Title III) or tax provisions (Title IX) of the Federal Act or said Act in its entirety should be held unconstitutional or inoperative, the State Law should become void and inoperative.*

(5) The Alabama Act levies assessments, foreshadowed in the title as contributions and referred to in the Act or in the amendment last above quoted in the alternative as "levies, contributions, taxes, or payroll deductions," the payment or withholding of which is made compulsory under heavy penalties upon all employers of more than eight persons during twenty or more weeks in the year 1935 or in any subsequent calendar year, with the exception of agricultural labor and certain other exempted classes of employers and their employees.

[fol. 4] Plaintiff falls within the description of employers who are made subject to the "contribution." The Commis-

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* Section 5½. It is expressly provided that in the event the Supreme Court of the United States shall hold Title Three or title nine of the Federal "Social Security Act" approved by the President August 14th, 1935, unconstitutional or inoperative for any reason whatsoever, then this Act shall become void, inoperative and of no effect and all payments of levies, contributions, taxes or pay-roll deductions made hereunder and then remaining unexpended shall be returned ratably to those making such payments and if such payments contain in whole or part deductions from the remuneration of employees, such employees shall in turn be repaid ratably such deductions as are returned on their account to their employers. (Sec. 5½, Acts 1936 at p. 180). Act No. 195, p. 228.

sion has heretofore made call under color of and in conformity with the provisions of the Act, for the payment of the percentage of plaintiff's payroll stipulated for the year 1936 (.90 of 1%), the accrual up to September 1st to be payable on or before October 5th; the accrual for September and subsequent months to be payable on or before the fifteenth day of the succeeding calendar month.

The contribution proposed by the Act to be exacted of employers occupying the status of plaintiff ranges from .90 of one (1) per cent. for 1936, 1.80% for 1937, 2.70% for 1938, 1939 and 1940, and increases to a maximum of 4% for 1941, subject to possible adjustments, in no event having the effect of reducing the levy on any employer subject to the Law below 1.5% of the entire payroll of the employer for the calendar year, and in no event to reduce the average levy on all employers below three (3) per centum, in addition, in all cases, to one (1) per cent. levied upon their employees' gross wages and salaries.

Should the fund established by these levies approach insolvency under the distribution of benefits beginning two years hence, the Commission is required "at once (to) inform the Governor and the Legislature thereof and make recommendations accordingly." Section 10 (a).

No benefits may be drawn down by any employee until two years after the first payments into the fund became due October 5, 1936, the fund meanwhile accumulating in the Federal treasury to which it is drawn under the Social Security Act (Section 904 (a)), as accepted by the State Law.

[fol. 5] (5½) No employer and no employee acquires any interest in the fund. The Federal Social Security Act provides as a condition to — federal aid to any State plan of unemployment compensation (Sec. 303 of Title III) that the State Law shall be approved by the Federal Social Security Board and Title IX (Sec. 903) provides among the conditions authorizing approval a finding that

"(6) All rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time."

Responsive to this condition, Section 18 of the Alabama Law provides that

"The legislature reserves the right to amend or repeal all or any part of this act at any time; and there shall be no vested private right of any kind against such amendment or repeal • • • " (Acts, 1935, p. 967; Acts Ex. Sess. 1936, at p. 229).

The fund, accordingly, remains at all times subject to diversion by the legislature, without reference to the original sources of the fund. Exercising this reserved right the Legislature of Alabama by amendment of the Act, No. 194, approved April 21, 1936 (Acts, Ex. Sess. 1936, p. 225) has excluded from distribution of benefits under the Act employees of certain classes of employers theretofore subject to the levy. Notwithstanding their exclusion after April 21, 1936, the defendants enforcing the Act are making demand upon the excluded employers for the payment of the levy accrued for the period January 1—April 21, 1936; thus constituting an administrative interpretation of the Act that the levy is made without reference to any prospective distribution of benefits to ex-employees of the employers who build up the fund, and that no weight need be given that circumstance by the legislature in prescribing the application of benefits.

Plaintiff is informed and believes, and upon such information and belief avers that under the Act as now amended employers of less than 27% of employees in Alabama gain- [fol. 5a] fully employed are now subject to the levy, as a result of group exemption of certain classes of employers (agricultural, railroads, etc.), and as a result of excluding businesses employing less than eight workers and all businesses not operating for as much as 20 weeks per annum; that approximately 30% of all persons in the employ of businesses not exempted under the Act are employed by employers with less than eight workers and their employees are accordingly excluded from the levy; that approximately 50% of all workers gainfully employed in Alabama are employed in agriculture and excluded from the Act, these exempted classes with others exempted or otherwise excluded aggregating approximately 75% of the total of all persons gainfully employed. Plaintiff is informed and believed, and upon such information and belief avers that said exempted or excluded employees are as much or more subject to the likelihood of future unemployment beginning October 1, 1938 (the date when benefits become first distributable) as those now in the employment of plaintiff.

(6) In short, the system proposed to be established by the Act is a compulsory scheme of unemployment insurance to be administered for the benefit of a selected group of unemployed persons, stimulated or forced and in essentials controlled by the Federal government and maintained not by any general state tax but by a levy in the nature of a special assessment upon the employers subjected to the Act, and for the time being upon their employees, accompanied by the compulsory pooling of the revenue thus derived into the federal treasury for distribution at some time in the future and to such beneficiaries, as the State may then determine. The original act has already been amended three times. There is no legal or practical assurance that the levy against plaintiff and other employers now subject to the Act will be applied for the benefit of their ex-employees or that any person now in the employ of plaintiff will [fol. 6] at any time become qualified to receive or actually receive a benefit, or if received that such payment will have any remote relation to plaintiff's business or welfare or that the establishment or maintenance of the system confers any current benefit upon plaintiff or its employees during the period in which apparently, the Act is accumulating a fund for payment to future unknown beneficiaries.

Plaintiff is by the terms of the Act liable for the payment of $5,452.04 for account of the statutory percentage of the wages payable with respect to employment from January 1, 1936, through August 31, 1936, and $3,147.24 in employees' contributions for the period May 1 to August 31; $717.86 with respect to the month of September, and $797.63 in employees' contributions for September, and will be required to pay an estimated amount of $2153.58 with respect to wages during October, November and December, 1936, or an estimated total of $8,323.48 due by the company for the year 1936, and $6,337.76 due by its employees.

The estimated amount of the company's contribution, at the percentages prescribed by the Act for 1937 and 1938 will be $17,228.70 and $25,843.06 respectively, or a total of $51,395.24 for the three year period, 1936-1938.

The estimated amount of the contribution levied or to be levied against plaintiff's employees from May 1, 1936, the date prescribed as against employees by amendment of the Act (Sec. 4 (d), Act No. 194, approved April 21, 1936, p. 225) through 1938, is approximately $25,000.00.

(7) Plaintiff is advised by counsel, informed and believes, and upon such advice, information and belief avers that the said Alabama Unemployment Compensation Law, as amended, was and is void and invalid in its entirety as to plaintiff, both as to the levy against plaintiff and as to the compulsory withholding of the amounts levied against its employees; and that said Law is invalid both because of its [fol. 7] intrinsic violation of the state and federal constitutions and for the further reason that by the amendments approved April 21, 1936 (Sec. 5½ of Act No. 156, p. 176 and Act No. 195, p. 228), the Act is made conditional, ab initio, upon the validity of Title III, Title IX of the Federal Social Security Act and that entire Act; all by reason of the facts and averments set out below.

(8) Plaintiff is engaged within the State of Alabama in the sole business of operating a plant for the manufacture of kraft paper and products thereof, and has been engaged in the erection or operation of said plant since 1928. In 1934 the plant shut down twice, for three weeks and two weeks, respectively, on account of floods and repairs. For approximately three months in 1935 operations were suspended on account of a strike or labor dispute. With these exceptions the plant has never shut down for as long as two weeks, and such shut-downs as have occurred have been at long intervals.

Since the beginning of operations in 1928 there has been no curtailment in the total employee personnel regularly employed and reporting for work. The plant is working now and has from the outset worked on appropriate shifts throughout the 24 hours of the day, continuously throughout a work week of six days.

At the beginning of operations in 1928 plaintiff employed approximately 541 men. This personnel was during 1933 increased by the addition of approximately 200 employees in response to NRA request, accompanied by introduction of six hour instead of eight hour shifts, and, since that time, plaintiff has continuously employed approximately from 775 to 800 men.

Plaintiff's employees are in practice divided into three groups, salaried employees, regular employees working on an hourly basis, and a much smaller group which is called upon for peak or unusual work and is, in general, employed [fol. 8] on that basis and in such wise that they (the latter)

do not make arrangements looking to permanent employment.

The salary group have increased steadily and progressively, with a nominal number of exits except for death or to take other employment, removal from the state or like cause having no actual relation to unemployment.

The regular personnel of hourly wage workers have, in like manner, progressively increased with substantially steady employment and with a low percentage of exits of a character sufficient to qualify them under the Act for unemployment insurance benefits.

In general, plaintiff avers upon information and belief that the nature and character of its business and employment of labor does not justify the imposition upon plaintiff or its employees of the contributions to the general problem of unemployment insurance levied upon plaintiff and its employees by the Act, which (based upon the average rate of 3% required during and subsequent to 1941) will amount to more than $38,000 annually.

(9) The Unemployment Compensation Commission has, under color of said Act, demanded and is continuing to demand information as to plaintiff's books, records, and pay rolls, including a weekly statement of all persons performing any service for plaintiff during 1935, their wages, and as to the provisions of the contract relationship; has notified plaintiff and other employers subject to the provisions of the Act that it requires and will require the keeping of the elaborate records contemplated by the Act, the filing of monthly reports and the payment of employer contributions and the withholding and payment of employee contributions, and that the Commission will seek enforcement of the penalties provided by the Act (Section 15-b) in the event of non-compliance; viz.: a fine of from $20 to $200 for each day of non-compliance, imprisonment not exceeding [fol. 9] sixty days or both, and the withholding of the certificates with respect to off-sets under the Federal Act.

(10) Plaintiff avers that the conception and policy underlying the entire scheme of the Act is that those employers who continue to operate their plants and continue to pay wages and their employees who receive wages and salaries are required to provide unemployment insurance for the ex-employees of competitors as well as employees of unrelated plants and industries which cease or curtail employ-

ment, thus directly expropriating money from one individual or group to distribute it directly to another and without pretense of an appropriation of public funds. The more continuous the employment in a given plant or business, the greater its contribution to the consequences of instability at its competitors' and at unrelated plants.

There is nothing in the character of plaintiff's business which warrants singling out the plaintiff and others similarly situated to bear as an employer (rather than a taxpayer along with all other taxpayers) the burden and responsibility of unemployment in the State of Alabama, either as to exemployees of others or as to theoretical unemployment which may, two years hence, originate in a theoretical shut-down of plaintiff's plant or curtailment of its operations.

(11) The business conducted by plaintiff is not hazardous by nature and has not been made the basis of any hearing, investigation or report by the legislature or other public authority in Alabama. There is nothing in the nature of plaintiff's business or the terms of its contracts of employment to invite mediation, regulation or intervention by the State in the negotiation of wages or salaries or as to dismissals or ceasing operation.

So far as plaintiff is advised, its entire employee personnel has solicited and accepted employment on terms fully [fol. 10] understood in advance and satisfactory to themselves. The large majority of its employees established their contract relationship prior to the adoption of the Act.

So far as plaintiff is advised, there has been no complaint from the operating management nor any suggestion from any employee or from any legislative committee or social board that the efficiency or contentment of plaintiff's employees would be increased or that turnover in the future would be avoided if a system of unemployment compensation were established at the plant, voluntary or compulsory. The possibility of any such result is, as a matter of fact as applied to plaintiff, so remote, imperceptible and improbable as to be beyond the legislative discretion.

As to the legitimate functions of the State in the matter of the relationship between employer and employee, plaintiff is subject to and is abiding by all pertinent laws and regulations of the State of Alabama, including the Alabama Workmen's Compensation Act (Code, Chap. 287, Art.

2), to which plaintiff is subject by reason of its continuous employment of more than sixteen employees; to the provisions relating to mediation and arbitration (ib., Art. 4), to the Child Labor Laws (Code, Chapter 99), to the factory inspection law (Code, Section 981), and, in general, to all police regulations of the State of Alabama in fact relating to the employee relationships or business of plaintiff.

Plaintiff avers that the risk of unemployment originating in its own plant is, as to the future, remote and imperceptible, and that the general or conjectural risk of unemployment originating at the plants of other employers is not a function of plaintiff's business or operations such as to warrant legislation by the State of Alabama throwing upon plaintiff the responsibility for and cost of providing directly against such unemployment in either case.

[fol. 11] There is no plant or business in Alabama in which operations, once begun, have been slowed down or employment curtailed as a result of plaintiff's continued operation of its plant and business or as a result of competition from plaintiff.

On the contrary, plaintiff's continued operation from the beginning has tangibly, continuously and directly contributed to employment in other businesses in Alabama.

Plaintiff avers, in short, that there is nothing in or inherent in its business or operations which can be said even remotely to have contributed in the past or to be likely to contribute in the future to unemployment either of its own employees or recent employees or the employees of others in such wise as, on that account, to warrant police regulation by the State of Alabama or the subvention and control of such regulation by the Federal government.

(12) Plaintiff avers that the Alabama Act is invalid, null and void as to plaintiff and as to all other employers in Alabama similarly situated in the respects and for the reasons stated below.

As a System of Compulsory Unemployment Insurance

(a) The Alabama Act purports to establish, and to tax plaintiff in order to maintain, a compulsory system of unemployment insurance having no lawful or reasonable relation to the relationship between plaintiff and its employees;

[fol. 12] (b) The Act in effect compels plaintiff to accept financial responsibility for its employees beyond and after

the termination of their employment, in relation to a matter not in any respect arising out of or incident to or inherent to the employment or the relationship;

(c) The Act is compulsory with reference to a matter necessarily beyond and independent of the employment in that the benefit cannot be drawn upon by the employees until after the employment has ceased, and if the former employee has transferred to other employment, until that employment also has ceased;

(d) The Act in effect compels plaintiff as a condition to employing eight or more employees for twenty weeks in any calendar year to agree to pay, not merely the wages fairly contracted for, but in addition the percentages of the agreed wage fixed by the Act until 1941 and as determined by the Commission during 1941 and subsequently.

(e) The Act in effect compels plaintiff to contribute to a fund for the support not merely of its own former employees after the termination or cessation of their employment, but for the support, during unemployment, of workers never at any time employed by the plaintiff whose misfortune or discharge for cause will in no respect be caused by plaintiff and who have had no relationship to plaintiff at any time.

(f) The Act is wholly arbitrary as a regulation in that there is no assurance under the statute nor any calculable probability that the present levy against plaintiff and its current employees will, two years hence and thereafter, be available for distribution to plaintiff's present employees or its then employees who may then leave its service, or that the Act will not be amended so as to exclude from benefits the persons (now employees of plaintiff) in respect [fol. 13] of whom the levy to build up the fund is now being made both against plaintiff and such employees, or that such employees will not become ineligible under the Act or otherwise. In short, there is no reasonable assurance that the distribution of benefits will ever be related to plaintiff or its employees who contribute to it.

(g) The Act seeks to throw upon plaintiff the burden of unemployment arising out of no breach of duty, fraud, act of misconduct, negligence, or bad citizenship on part of the plaintiff, and arising out of no relationship to the previous

employment; and, in effect, holds plaintiff subject to distraint and liability in respect to a status (unemployment) for which plaintiff is in no respect whatever responsible either to its own former employees or to former employees of others;

(h) The Act under the false guise of regulating the relationship between employer and its employees under the police power, in fact and in effect singles out plaintiff and others similarly situated to compel satisfaction by them of a social desire, policy or obligation of the State.

In the several respects stated the Act deprives plaintiff of its property, of its freedom of contract, and of its liberty without due process, in violation of the 14th Amendment to the Federal Constitution (and of Sections 1 and 35 of the Constitution of Alabama); it takes plaintiff's property without just compensation, in violation of Section 23 of the Constitution of Alabama (1901) and for private use (without the consent of plaintiff), in violation of said Section 23.

Said Act in enlarging the effect of plaintiff's contract relationship with its own employees, established prior to the enactment of the Act (September 14, 1935), and in attaching to the relationship thus previously established burdens and penalties not fairly incident to the contract or to regulation of the relationship, is in effect a law that impairs the obligations of the several contracts of employ-
[fol. 14] ment by which plaintiff's employees were admitted into its service, all in violation of Section 10 of Article I of the Federal Constitution, and of Section 22 of the Constitution of Alabama.

As to the Pooling of Contributions to the Fund and Benefits

(13) Plaintiff avers that the compulsory placing of the burden of unemployment on plaintiff jointly with other employers as proposed by the Act, removes that exaction from any rational or ostensible connection with plaintiff's business or employer relationship in that it pools all contributions of all employers subject to the Act and of their employees into a single fund and extends the benefits of the fund to all ex-employees who after two years become eligible as now defined in the Act or as may be made eligible by future extension of the Act. Plaintiff avers that in this respect the Act is void because of violation of the due

process clause of the Fourteenth Amendment, in that it appropriates to wholly remote and conjectural uses funds collected from plaintiff upon the theory of regulating plaintiff's relationship or obligation to its own employees, and by averaging plaintiff with all others as to a scheme which does not actually become effective for two years necessarily throws upon plaintiff a risk and burden not related to its business or property.

(14) Conforming to the requirement of the Federal Social Security Act, the distribution of benefits is postponed for two years; hence the effect of the Act is to exact from plaintiff and its employees a contribution to a fund which is arbitrary and is not rationally related to any present function of plaintiff's business or employer relation and is in effect a confiscation of the property and wages of plaintiff and its employees to set up an insurance fund as a predicate to a future scheme.

(15) The exaction of a fund presumably based and calculated upon a forecast of unemployment two years hence, [fol. 15] admittedly unpredictable and expressly subject to repeal or amendment both as to the benefits and the eligibles, has no reasonable relation to plaintiff's existing business or employer relationship and is arbitrary.

(16) Plaintiff avers that an Unemployment Compensation Act, in so far as it may find justification under the Constitution of Alabama, must take the form of a poor law sustained by the taxing power, and that the Act in question is in violation of Sections 88 and 93 of the Constitution of Alabama, which direct the legislature to require the several counties of Alabama to make adequate provision for the maintenance of the poor in their respective counties and prohibit the legislature from appropriating state funds or credit to the benefit of individuals, whereas the Act in question, under the guise of state-wide unemployment relief, absolves the counties of that constitutional duty, throws the financial burden of state-wide direct relief upon plaintiff and other employers singled out by the Act without confining it to the County, bases the compensation upon a false theory of compensation rather than indigency, and transfers the administration of the matter from the counties directly informed and concerned to a State Commission and to the Federal Government.

(17) The Act is arbitrary in that in the guise of regulating plaintiff's business and that of other employers, the Act in fact transfers directly to plaintiff and other employers subject to its provisions, and their respective employees, the performance of a duty or obligation which rests upon the State or its subdivisions if it rests upon anyone.

(18) The Act is moreover intrinsically arbitrary and violative of the principle of poor relief as contemplated by Section 88 of the Constitution of Alabama in that it directs the payment of benefits to the eligible unemployed regardless of their age, circumstances, needs or requirements, and [fol. 16] takes the funds of plaintiff and other employers and their employees to support individuals during periods of interrupted employment who are not public charges or likely to be public charges. The Act excludes any consideration of the circumstances of the beneficiaries and in the respects stated constitutes an arbitrary regulation of plaintiff's business in violation of the due process and contract clauses of the State and Federal constitutions above mentioned.

(19) Said Act is also in violation of Section 93 of the Constitution of Alabama, which prohibits the State from appropriating its money or its credit to any individual and by necessary implication prohibits the legislature from appropriating the funds of individuals to a private use to which the legislature could not appropriate State funds.

(20) The Act is invalid in that it authorizes the expropriation by the State of plaintiff's funds for a private purpose while Section 93 of the Constitution declares that state aid of individuals is not a legitimate function of the Legislature.

(21) Said Act is, furthermore, void in that it violates Section 45 of the Constitution of Alabama, requiring that laws enacted by the legislature shall contain one subject, which shall be clearly expressed in its title, in that the title to the Act contains no clear expression of the basic subject matter of the Act, which is the compulsory levy or expropriation of assessments against employers and employees with which to build up a fund. The reference in the title to these taxes as "contributions" is not an accurate reference to the basis of the fund, is lacking in legislative certainty, misleading [fol. 17] and in violation of said Section 45. The amend-

ment of the Act (No. 156, H. 204, Acts 1936, at p. 176) acknowledges the legislative confusion as to the matter by referring to the assessments as "levies, contributions, taxes or pay-roll deductions."

(22) Said Act is also void because of its purported delegation of legislative power in violation of Sections 42, 43 and 44 of the Constitution of Alabama, conferring all legislative power of the State exclusively upon the legislative department, limiting the respective departments to their functions as delegated by the Constitution, and establishing the Senate and House of Representatives as the sole legislative agency of the State. Said Act unlawfully delegates legislative power and discretion in that

(a) It binds the State of Alabama to legislative policies prescribed by the Federal government by the acceptance of the conditions prescribed in Titles III and IX of the Federal Social Security Act and by making the Act conditioned upon the validity of those titles and of the Federal Social Security Act in its entirety.

(b) It delegates to the Federal government the handling and investment of the Unemployment Compensation Fund and in accepting the conditions prescribed by the Federal Social Security Act as to the release of the funds by the Federal Treasury, surrenders or hampers the power and duty to legislate with reference to the matter.

(c) By depositing the fund in the Federal Treasury subject to the provisions of Titles III and IX of the Social Security Act the State of Alabama unlawfully subjects the power to repeal the scheme established by the Act to the loss of the fund, since Section 903 (4) of the Federal Act ex- [fol. 18] pressly stipulates that withdrawals of the deposits made by the States shall be used "solely in the payment of compensation."

(d) The Act provides that its existence, ab initio, is conditional upon the validity of the Federal Social Security Act and Titles III and IX of that Act, and thus leaves the effectiveness of the Act in a state of suspense and uncertainty sufficient to make it abortive as legislation.

(e) The Act is lacking in legislative certainty and is void in making as a condition to its existence the future action

of the Supreme Court of the United States in relation to a federal measure.

(f) The Act, as amended, is void in that it is based upon provisions for levies in the nature of taxes the enforcement of which is supported by provisions for heavy penalties and fines, all of which are made conditional upon the decision of the Supreme Court of the United States as to a federal statute, unpredictable by the plaintiff and other employers, without any assumed or effective right of the plaintiff to invoke that decision or guess it in advance or before the fines and penalties are to be enforced.

(g) The Act, in the respect last above stated, violates the principle of due process within the purview of the decision in International Harvester Company v. United States, 274 U. S. 693.

(23) The Act, while enforcing contributions to establish a fund purporting on the face of the Act to be for the relief of unemployment, two years or more in the future, among the then eligibles defined by the Act, provides that the legislature may amend or repeal the Act, thus effectively re- [fol. 19] serving the power to expropriate the entire fund to any public purpose to which the Federal Government may consent, without vested right of any kind against such amendment (Section 18 of the Act). The effect of this power is to hold the funds paid in subject to recapture as free revenue of the State, provided the Federal Government consents. For this reason and because the Act on its face, as its primary base, viz, the establishment of a public fund, is to raise revenue, the Act is void because of its origin in the Senate in violation of Section 70 of the Constitution of Alabama requiring that all bills for raising revenue shall originate in the House of Representatives.

(24) The Act is arbitrary, denies to plaintiff due process and deprives it of its property without just compensation in violation of the stated provisions of the state and federal constitutions above referred to, in that the schedule of contributions levied against plaintiff and other employers subject to the Act and their respective employees as a whole has no basis in any reports, records or experience, assembled by or available to the legislature, was evolved without legislative or departmental hearing, was supported by no avail-

able actuarial data, and constitutes a wholly arbitrary levy of the statutory percentages, devised and divided arbitrarily and without any known or discretionary basis as between employer and employee.

(25) The said schedule and assessment are, moreover, arbitrary as to plaintiff in particular and violative of the Constitutional provisions stated above in providing for no investigation or hearing by the Legislature or by any Court or tribunal before levying the assessments which are to obtain until the year 1941, and in providing for no hearing for the matter of determination of relative or reciprocal or special benefits or whether the supposed benefit to plaintiff exists or is equal to the assessment.

[fol. 20] On the contrary, the Act freezes a uniform ratio as to all employers until 1941, regardless of past experience or current status of unemployment originating with the individual employers and for and after that year unlawfully delegates to the Commission the discretion to establish the ratio of the assessment at from 1.50% to 4% (prescribing an average minimum for all employers of not less than 3%) and without the establishment of any standard or test for the determination of the percentage within the discretion left to the Commission, all in violation of the due process, compensation and delegation clauses of the State Constitution and the due process clause of the Federal Constitution above stated.

(26) The system established by the Act does not purport to set up any reciprocal or compensating advantage, referable in a constitutional sense to plaintiff. Plaintiff will in fact obtain no tangible or known advantage from the scheme not enjoyed by the general public and by all taxpayers if, two years hence, when the benefits begin to be distributed, the distribution tends to cushion unemployment generally in the state. Such general, remote and hypothetical benefits do not warrant the heavy present expropriation of money from plaintiff and others singled out for the purpose.

Regarded as Tax Levies

(27) The contributions assessed under the Act both against the employer and employee are moreover in violation of the Constitution of Alabama and void for the

further reasons stated below. The scheme represented by the Act is an integral one, based upon the raising of the so-called compensation fund. The Act is, accordingly, dependent for its validity upon the validity of the levies made under the Act.

Regarded as taxes, plaintiff avers that the levies are null and void for the following reasons:

[fol. 21] (a) The levy, in the case of the employer on his gross expense for wages and salaries, and in the case of the employee upon his gross income from wages or salary, is in violation of the Constitution of Alabama. In the latter case (the levy on employees) the tax is necessarily to be regarded as an ad valorem tax levied upon the wages as they accrue for payment, within the meaning of the decisions of the Supreme Court of Alabama in Ex parte Morrill-Doyle Realty & Ins. Co., 213 Ala. 697, 106 So. 63, and Eliasberg Mercantile Co. v. Grimes, 204 Ala. 492, 86 So. 56. Being at the rate of 1%, the tax is in violation of Section 211 and 214 of the Constitution of Alabama, fixing the base of ad valorem property taxes on value and limiting the rate to .65 of one per cent. As an income tax, the tax is not justified under the income tax amendment (XXII) inasmuch as it is levied upon an element of gross income and is not subject to the deductions and exemptions provided by said Amendment nor levied upon net income and is therefore not authorized by the income tax amendment.

(b) Regarded as a tax levied against plaintiff and other employers (on the theory of license tax for pension funds) the tax is invalid both (1) in the levy and (2) in its scheme of appropriation by the State.

1. The tax is arbitrarily levied against employers of eight workers for more than twenty (20) weeks in 1935 or subsequently in the included businesses, while arbitrarily excluding from its operation (a) employers of workers in the same industry, however numerous, for less than 20 weeks in any calendar year; (b) employers of seven workers or less, although in continuous operation; (c) employers of agricultural labor, however numerous or continuous; (d) employers of crews on navigable waters; (e) employees of railroads subject to the Federal Railway Labor Act. These exceptions constitute an unlawful and arbitrary discrimination against plaintiff and the other included classes of

[fol. 22] employers, lacking in any lawful basis of classification and having the effect of taking plaintiff's property without due process and denying to plaintiff the equal protection of the laws, contrary to the 14th Amendment of the Federal Constitution and the due process requirements of the Constitution of Alabama (Sections 1 and 35) referred to above.

2. If regarded as an ad valorem tax on the money in the possession of plaintiff and paid out to its employees it is at a rate higher than permitted by Section 214 of the Constitution of Alabama and in violation of that provision.

3. The scheme represented in the collection and application of the levies is violative of the due process clauses of the State and Federal Constitutions in that it is a plan for the expropriation of funds from one class for the benefit of individuals and is not within the taxing powers of the State of Alabama.

(28) The scheme is inherently arbitrary and the levies proposed to be made both upon plaintiff and its employees constitute a burden upon plaintiff in the conduct of its business and the use of its property amounting to denial of due process contrary to the due process provisions of the State and Federal Constitutions, in that the scheme proposes levies grossly in excess of the object in view, in so far as the objective has any lawful relation to plaintiff. The scheme contemplates a maximum allowance to an eligible employee of up to $15 per week for 16, plus a possible extended 10 weeks, aggregating a total of $390. The contribution proposed to be exacted from plaintiff and its employees during the period before the first benefits are payable * will aggregate not less than $75,000. The additional amounts required to be paid into the fund for the years 1939 and 1940 [fol. 23] by plaintiff and its employees, estimated to be in excess of $70,000, will under the Act be required to be paid over by the inflexible terms of the Act before plaintiff can invoke any administrative action to reduce the ratio; and during and after 1941, the best that plaintiff can expect

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* Two years from the first date upon which contributions became due (Act, Sec. 5 (a)), which was fixed by direction of the Commission at October 5, 1936.

under the Act is to reduce its permanent annual contribution to an estimated $15,000 per annum, its employees' assessment remaining fixed at 1%, or approximately $10,000.

The results stated, whether the Act be regarded as an attempted regulation of the business or a contribution assessed for the public welfare or as a tax incident to and appropriated to maintain a benefit insurance or pension scheme (in this case, not for public employees but for private individuals), are so grossly remote, excessive and out of relation to any possible benefits to plaintiff or its employees as to constitute a discriminatory, excessive and unusual burden upon plaintiff's business and a violation of due process.

(29) The provision of the Act precluding plaintiff from any hearing upon the matter of the rate until 1941 in and of itself makes the Act arbitrary and oppressive.

Aside from the high level of employment in all classes of employees, plaintiff employs approximately seventy salaried employees with nominal variation in the number. During 1933 there was at no time a falling off of more than one (1) in the number of salaried employees from the previous high of the year, during 1934 one (1), during 1935 two (2), and during 1936 to date two (2). The salaries paid shop employees, not including hourly wage employees, (average 71) during 1935 was approximately $145,662.83, in addition to approximately $90,000 paid central office salaried employees. There was and is in prospect substantially no turn over. The inclusion of such employees in the computation of the levy upon plaintiff and said employees is plainly arbitrary and out of relation to any supposed or theoretical benefit, public or private, proceeding either to the plaintiff or such employees under the plan.

[fol. 24] As an "excise" or "regulatory" tax, even if otherwise leviable, it is grossly out of relation to the privilege exercised or public service or function involved, if any.

Federal Social Security Act

(30) The validity of Titles III and IX of the Federal Social Security Act and that Act in its entirety are adopted by the amendments of the State Act as the basis and test of the existence of the State Act (Amendments, Ex. Sess. 1936, pp. 225 and 228). Said titles and their adoption as the

test of valid legislation by the State of Alabama are in violation of the Federal Constitution, in so far as they purport to justify a levy upon plaintiff or the receipt and handling of the proceeds of levies under the State Act, for the reasons stated below. Wherefore, in addition to the legislative uncertainty arising out of the condition stated above, said State Act is by its terms void and insufficient to justify the levies, threats and interferences threatened by the defendants.

Title III

(a) The provisions of Title III of the Federal Act violate Section 1 of Article I and Paragraph 18 of Section 8 of Article I of the Constitution of the United States in that Section 302 (a) illegally delegates to the Federal Social Security Board legislative powers vested by the Constitution solely in the Congress and such attempted delegation fails to prescribe definite standards under which the powers attempted to be delegated to the Federal Social Security Board may be exercised by it. The said Board is directed to determine and certify for payment to each state meeting the requirements of the Federal Act such amount of the Federal appropriation found by it to be necessary for the proper administration of the law during the fiscal year in which the payment is to be made but it is provided that such determination shall be based not only upon the population of the state, but upon an estimate of the number of per- [fol. 25] sons covered by the state law, as to which neither the State nor Federal authorities have accurate information, and such other factors as the Board finds relevant—a test not limited or defined by any standard and resting in the arbitrary and uncontrolled discretion of the Federal Board.

(b) The provisions of Title III of the Federal Act violate the Tenth Amendment to the Constitution of the United States in that by the appropriations therein contained and the conditions with respect to legislation therein required of the respective states Congress has sought to coerce and compel the legislatures of the several states to adopt specific legislation and thus govern the concerns reserved to the states by the Constitution.

(c) The provisions of Section 303 (b), Title III of the Federal Act violate the Tenth Amendment to the Constitu-

tion of the United States in that, in vesting in the Federal Social Security Board the right to refuse any state the benefit of the appropriations made by Section 301 of said Title III and to refuse certifications to the Secretary of the Treasury required as a condition precedent to payment from such appropriations upon the sole and discretionary determination of the said Board as to whether there has been legal denial of unemployment compensation payments under the provisions of the state law or compliance with the state law, Congress has sought thereby to govern the concerns reserved to the states by the Tenth Amendment to the Constitution.

Title IX

(d) The provisions of Title IX of the Federal Act, Section 903, violate the Tenth Amendment to the Constitution of the United States in that thereby and by the other provisions of said Title IX Congress has sought to compel and coerce the legislatures of the several states to adopt specific legislation and to surrender control of state funds to a Fed- [fol. 26] eral agency and thus to govern the concerns reserved to the states by the Tenth Amendment to the Constitution.

(e) The provisions of Title IX of the Federal Act, Section 903 (b), violate the Tenth Amendment to the Constitution of the United States in that in vesting in the Federal Social Security Board the discretion to certify or not to certify to the Secretary of the Treasury any state which the Board finds has changed its law so that it no longer contains the provisions specified in the Federal Act, or has with respect to a particular taxable year failed to comply substantially with any such provision, upon the sole and discretionary determination of the Federal Board, Congress has attempted to govern the concerns reserved to the states by said Amendment.

(f) The provisions of Title IX (Sec. 903 (4)), refusing the release of the deposits of the State except upon condition that withdrawals "shall be used solely in the payment of compensation" unduly hampers the legislative and sovereign discretion of the State of Alabama in violation of the Tenth Amendment.

(g) The provisions of Title IX (Sec. 93 (2)) that no compensation shall be payable until the fund has accumu-

lated for two years, and of Sec. 910 (a) (1) that a merit rating or adjustment is not to be permitted any employer except on the basis of not less than three years of "compensation experience" will defer for a period of at least five years from January 1, 1936, any chance of plaintiff or other employers to obtain an adjustment of the levy based on merit rating or any rational or informed ascertainment of the facts.

(h) The provisions of Title IX of said Act are repugnant to the provisions of the Fifth Amendment in that the same deprive plaintiff and its employees of their property without due process of law and constitute a taking of their property for public use without compensation.

(i) Said Title IX, in conjunction with Title III constitutes a scheme to induce or compel the states to establish [fol. 27] and maintain a system of unemployment compensation based on contributions levied against employers, an objective beyond any of the delegated powers of the Federal Government.

(j) The provisions thereof which seek to levy taxes thereunder violate the Constitution of the United States in that the so-called taxes therein sought to be levied are not taxes authorized by the Constitution of the United States for the support of the Government, but are illegal exactions designed to expropriate money from one group of citizens for the benefit of another group in violation of the Fifth Amendment.

(k) The taxes or contributions levied by said Title IX are not taxes levied for the purposes of the Government nor to provide for the general welfare of the United States within the authorization of Article I, Section 8 of the Constitution.

(l) Said taxes are merely exactions levied in an attempt to regulate matters over which the Congress has no authority, in violation of the Ninth and Tenth Amendments.

(31) Plaintiff will suffer irreparable injury because of the matters herein complained of if said Alabama Act is enforced by defendants, for which injury plaintiff has no adequate remedy at law and no redress or remedy except

in a court of equity or unless the injunctions prayed for herein are granted, for the following reasons among others:

If plaintiff, to avoid the severe penalties prescribed by the Act for non-compliance pays the tax or assessment levied by the Act, there is no adequate remedy available under the laws of Alabama for its recovery.

If plaintiff withholds and pays over the assessment levied against its employees, plaintiff will incur liability for and subject itself to a multiplicity of suits for the recovery of the amounts deducted.

[fol. 28] Plaintiff would also be put to great and unnecessary expense in complying with the requirements of the Act and the Commission as to elaborate and continuing records contemplated by the Act and the regulations of the Commission.

If plaintiff declines to conform, it runs the risk of and has been advised that the defendants will attempt to enforce the Act and apply the penalties, thus inevitably involving plaintiff in a series of proceedings to force payment and compliance and subjecting plaintiff to the grave risk of cumulative daily penalties and penalty interest.

If the fund is once paid over to the Federal Government under the Act, Section 903 of Title IX of the Federal Act provides for its withdrawal only for use "in the payment of compensation;" nor is there any method available to plaintiff to obtain direct refund of any levy passed into the Federal treasury.

(32) Plaintiff avers that this is a case of actual controversy within the meaning of Act Public No. 343, 73rd Congress, approved June 14, 1934, known as the Federal Declaratory Judgments Act (Sec. 274 (d), Judicial Code, 28 U. S. Code, Sec. 400), authorizing courts of the United States, upon petition or other appropriate pleading, to declare rights and other legal relations of any interested party; that declaration of the invalidity of said Alabama Unemployment Compensation Law and of Titles III and IX of the Federal Social Security Act, and of said Federal Social Security Act, in so far as they are severally made the basis and condition to the validity or effectiveness of said Alabama Unemployment Compensation Law, is appropriate under said Act.

(33) Plaintiff further avers that plaintiff is entitled under the Uniform Declaratory Judgments Act of the

Legislature of Alabama, approved September 7, 1935 (Act No. 355, Acts 1935, p. 777), to have said Alabama Unemployment Compensation Law and Titles III and IX of said [fol. 29] Federal Social Security Act, and said Federal Social Security Act, declared invalid in so far as the validity or invalidity thereof is made the basis and condition to the validity and effectiveness of said Alabama Unemployment Compensation Law.

Wherefore, the Premises Considered, plaintiff prays that this Honorable Court make parties defendant hereto the defendants hereinabove named in accordance with the statute and rules in such cases made and provided, and that process issue requiring them and each of them to appear and answer this bill in equity within the time fixed by the Court or by law, but not under oath, answer under oath being hereby waived; that a court of three judges, of whom at least one shall be a Justice of the Supreme Court or a Circuit Judge, be convened pursuant to Section 266 of the Judicial Code (28 U. S. Code, Sec. 380) to hear the plaintiff's application for a preliminary injunction as hereinafter prayed, and that immediate notice of the hearing of said application for a preliminary injunction be given to the Governor of the State of Alabama, and to the defendants in this cause; that this Court, being convened as aforesaid, issued its order and decree, preliminary to a final hearing and determination of this cause, restraining and enjoining the enforcement and operation or execution of the Alabama Unemployment Compensation Law and the taxes, contributions, penalties, forfeitures, fines or impositions therein provided for, by restraining and enjoining the defendants, and each of the-, and all servants, agents or employees of them and each of them from in any manner whatsoever collecting or attempting to collect, or taking any steps to collect, and from enforcing, directly or indirectly, by notice, suit, information, distraint, demand, levy, attachment, forfeiture, or otherwise, from or against the plaintiff, any tax, contribution, penalty, forfeiture, fine or imposition [fol. 30] levied, assessed or accruing under or under color of said Alabama Unemployment Compensation Law, approved September 14, 1935, or any amendment or amendments thereof; and that upon final hearing of this cause, said injunction be made permanent.

Plaintiff further prays that pending the hearing and determination of its application by the Court convened as aforesaid for an injunction preliminary to the final hearing of this cause, the Court issue its order and decree restraining and enjoining the enforcement and operation or execution of said Alabama Unemployment Compensation Law and the collection or imposition of the taxes, contributions, penalties, forfeitures, fines or impositions therein provided for, by restraining and enjoining the defendants and each of them and all servants, agents or employees of them and each of them from in any manner whatsoever collecting or attempting to collect, or taking any steps to collect, and from enforcing, directly or indirectly, by notice, suit, information, demand, distraint, levy, attachment, forfeiture or otherwise, from or against the plaintiff, any tax, contribution, penalty, forfeiture, fine, imposition or levy, assessed or accruing under or under color of said Alabama Unemployment Compensation Law or any amendment or amendments thereof.

Plaintiff further prays that this Court receive this bill of complaint as an appropriate pleading under the Federal Declaratory Judgments Act (Sec. 274 (d), Judicial Code) and also under the Uniform Declaratory Judgments Act of the State of Alabama (Acts 1935, p. 777) for the declaration by this Court of the invalidity of the Alabama Unemployment Compensation Law and of the non-effect of said Law by reason of the invalidity of Titles III and IX of the Federal Social Security Act and of said Federal Act upon which the effectiveness of the Alabama Law is conditioned, and to that end, that this Court declare said [fol. 31] Federal Act and Titles III and IX thereof invalid as to plaintiff, and by final decree herein declare that by reason of such invalidity as to plaintiff said Alabama Law is by its terms declared to be and is null, void and of no effect.

Plaintiff further prays that in addition to the parties hereinabove named or described as defendants, such notice or process issue to Harwell G. Davis, the United States Collector of Internal Revenue for the District of Alabama, whose residence is at Birmingham in the Northern District of Alabama, and such other officials or persons as may be appropriate.

And the plaintiff prays for such other, further or different relief as may be meet and just in the premises.

Respectfully submitted, Lucien D. Gardner, Jr., Jos. F. Johnston, Forney Johnston, Solicitors for Plaintiff. Cabaniss & Johnston, Of Counsel.

[fol. 32] *Duly sworn to by H. D. Warner. Jurat omitted in printing.*

[File endorsement omitted.]

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[fol. 33] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER SETTING APPLICATION FOR INJUNCTION FOR HEARING, ETC.—Filed October 17, 1936

This cause coming on to be heard upon plaintiff's application for the convening of a court of three judges to hear its application for a preliminary injunction, and upon its further application for a temporary restraining order pending the determination of the application for a preliminary injunction, and the matter being submitted upon plaintiff's verified bill of complaint, and being considered and understood by the Court, it is by the Court

Ordered, Adjudged and Decreed that plaintiff's application for the convening of a court of three judges to hear its application for a preliminary injunction is granted, and that said application for a preliminary injunction be heard and determined on October 26th, 1936, and that notice of such hearing be immediately given to the Governor of the State of Alabama and to the Attorney General of the State of Alabama, one of the defendants named in said bill of complaint, and to the other defendants named in said bill of complaint.

And it appearing to the Court that immediate and irreparable injury, loss or damage will result to the plaintiff unless the temporary restraining order, as prayed is issued because

(a) If the plaintiff pays to the Alabama Unemployment Compensation Commission the said contributions or taxes

now demanded of it by said Commission the plaintiff has no adequate remedy by suit, legal proceeding or otherwise to recover the said contributions or taxes paid by it in the event the Alabama Unemployment Compensation law is held unconstitutional and void or otherwise invalid,

[fol. 34] (b) The refusal of plaintiff to pay said contributions or taxes will subject the plaintiff to the additional interest, penalties, fines and criminal imprisonment fixed by said law unless the plaintiff is protected by a restraining order,

(c) Plaintiff has no other remedy save by injunction to protect its rights pending determination as to the validity of said law,

(d) No substantial injury will result to the defendants from the issuance of said restraining order,

It is, Therefore, Ordered, Adjugded and Decreed that the defendants Albert A. Carmichael, individually and as Attorney General of the State of Alabama, Jacob L. Kaufman, individually and as Chairman of the Alabama Unemployment Compensation Commission, Lucien C. Brown, individually and as Associate Member of the Alabama Unemployment Compensation Commission, and James A. Lipscomb, individually and as Associate Member of the Alabama Unemployment Compensation Commission, and each of their servants, agents or employees be and they are severally enjoined and restrained, until this Court shall have heard and disposed of said application for a preliminary injunction, from collecting or attempting to collect, or taking any steps to collect, and from enforcing, directly or indirectly, by notice, suit, information, distraint, demand, levy, attachment, foreiture or otherwise, from the plaintiff, any tax, contribution, penalty, forfeiture, fine or imposition levied, assessed or accruing under or under color of the Alabama Unemployment Compensation Law, approved September 14, 1935, or any amendment or amendments thereof.

It further appearing to the Court that the plaintiff has paid to The First National Bank of Montgomery as depository the monies required to be paid by it to date under the provisions of the said Alabama Unemployment Compensation Law, said payments having been made pursuant to the

orders of this Court heretofore entered in the cause pending in this Court entitled Alabama By-Products Corporation, a corporation, et al, plaintiffs, vs. A. A. Carmichael, individually and as Attorney General of the State of Alabama, [fol. 35] et al, defendants, In Equity, No. 690, in which cause the plaintiff herein was formerly a party plaintiff, it is by the Court

Ordered, Adjudged and Decreed that said The First National Bank of Montgomery as depository shall continue to hold said monies paid to it by the plaintiff herein until the further order of this Court and that such monies shall be held and disposed of in accordance with the further orders of this Court in this cause.

It is Further Ordered that the plaintiff shall execute and file a bond for One Thousand ($1000.00) Dollars with good and sufficient sureties, to be approved by this Court, conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained hereby.

It is Further Ordered that United States Bonds or Treasury Certificates of the par value of the amount of money deposited with said The First National Bank of Montgomery as depository may be substituted for such monies deposited at any time.

Done and Ordered this 17th day of October, 1936 at 10 o'clock, A. M., which is the exact date and hour of the issuance of this order.

(Signed) C. B. Kennamer, United States District Judge.

[File endorsement omitted.]

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[fol. 36] In United States District Court

[Title omitted]

Acceptance of Service and Waiver—Filed October 17, 1936

Service of notice of the hearing of plaintiff's application for a preliminary injunction on October 26, 1936 is hereby accepted on behalf of the Governor of the State of Alabama,

the undersigned as Attorney General of the State of Alabama, and of the other defendants in this cause, and further service or notice thereof, is hereby waived.

(Signed) Albert A. Carmichael, Attorney General, State of Alabama, Attorney for Defendants.

[File endorsement omitted.]

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[fol. 37] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER RESETTING APPLICATION FOR INJUNCTION FOR HEARING—Filed October 24, 1936

It appearing to the Court that October 30th is the earliest practical date for the convening of a court of three judges to hear plaintiff's application for a preliminary injunction, it is by the Court

Ordered, Adjudged and Decreed that plaintiff's application for a preliminary injunction be heard and determined on October 30, 1936, and that the hearing of its application heretofore set on October 26, 1936 be continued until October 30, 1936.

It is Further Ordered, Adjudged and Decreed, that the restraining order granted to the plaintiff by the order of this Court entered in this cause on October 17, 1936 be continued in full force and effect until this Court shall have heard and disposed of said application for a preliminary injunction which is set for hearing and determination on October 30, 1936.

Done and Ordered this 24th day of October, 1936.

C. B. Kennamer, United States District Judge.

[File endorsement omitted.]

[fol. 38] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER RESETTING APPLICATION FOR INJUNCTION FOR HEARING—Filed October 29, 1936

Heretofore in this cause, on the 17th day of October, 1936, an order was made and filed on the same date, a full and complete copy of which order is hereto attached, marked Exhibit "A" and made fully a part hereof. Thereafter, the application for a temporary injunction was postponed from ten o'clock A. M. on the 26th day of October, 1936, until ten o'clock A. M., on the 30th day of October, 1936.

On this, the 28th day of October, 1936, it was made known to the court that the Honorable Bibb Graves, individually, and as Governor of the State of Alabama, had not been given notice of the time and place of the hearing of the application for a temporary injunction before the statutory court, and the court was notified that he desired the full 5 days notice as required by the statute.

It is, therefore, Ordered, Adjudged and Decreed that the hearing of the application for a temporary injunction be and the same hereby is set down for hearing and determination in the court room of this court at nine o'clock A. M., on the 18th day of November, 1936 before the statutory court consisting of Judge Samuel H. Sibley, Circuit Judge of the Fifth Judicial Circuit, and Judge R. T. Ervin, a District Judge and C. B. Kennamer the District Judge to whom and in whose court the application for a temporary injunction was presented and filed, the former two having been in accordance with Section 266, as amended, of the Judicial [fol. 39] Code, called to the assistance of the undersigned to hear and determine said application.

It is, further, Ordered, Adjudged and Decreed that a copy of this order, including Exhibit "A" hereto attached and a copy of the bill filed herein be served by the Marshall of this court, or one of his authorized deputies in person upon the Honorable Bibb Graves, individually and as Governor of the State of Alabama.

It is, further Ordered, Adjudged, and Decreed that the restraining order heretofore granted to the plaintiff by the

court in this cause be continued in full force and effect until the statutory court shall have heard and disposed of said application for a preliminary injunction, which is set for hearing and determination as aforesaid on November 18, 1936.

All other matters reserved for such other and further orders as may seem just and proper in the premises.

C. B. Kennamer, District Judge.

UNITED STATES OF AMERICA,
Middle District of Alabama, ss:

I certify and return that on the 29 day of October, 1936, I received the within order and that I served a full, true and correct copy of the same together with all exhibits attached and all endorsements thereon, and a copy of the bill of complaint, on the Honorable Bibb Graves, individually and as Governor of the State of Alabama at his office in Montgomery, Alabama, on the 29 day of October, 1936.

Walter Bragg Smith, United States Marshal, By C. E. Smith, Deputy Marshal.

NOTES.—Here follows and is attached an exact copy of the order of October 17, 1936 and the filing thereof, captioned "Exhibit "A" and at foot of which is stamped "Returned and filed Oct. 29, 1936. O. D. Street, Jr., Clerk."

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[fol. 40] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS—Filed November 7, 1936

Come the defendants and respectfully move the Court to dismiss the amended bill of complaint in this cause and for grounds show:

1. There is no equity in the bill.

2. The plaintiff has a full, complete and adequate remedy at law.

3. The bill seeks to enjoin the administration and enforcement by the defendants of the Unemployment Compensation Law of the State of Alabama upon the alleged ground

that said Act is violative of the Constitution of the United States and of the State of Alabama, when, for aught that appears in the bill, the said law is a valid Act of the Legislature of Alabama and violates no provision of either the Federal or State Constitution.

4. By the bill the plaintiff seeks to enjoin the defendants from executing the duties of their office with reference to the Unemployment Compensation Law of the State of Alabama upon the ground that said law is unconstitutional and void, when, as a matter of law, the said Act is valid, and it is the legal duty of these defendants to uphold, administer and enforce the same, as appears by the allegations of the bill.

5. The bill seeks to procure this Court's injunction of the defendants from discharge of their duties as officers of the State of Alabama under said State's Unemployment Compensation Law, upon the alleged ground that the enforcement of said law by these defendants, in pursuance of the terms of the law and of their official duties, will work irreparable injury to the plaintiff, when, in the meaning of the term "irreparable injury" as known to the law and as defined by equitable rules and practices which prevail in this Honorable Court, such will not result to the plaintiff.

6. For aught that appears in the bill, the plaintiff by obeying the law, or by disobeying it, will not suffer irreparable injury, within the meaning of that term in law and in equity.

[fol. 41] 7. While the defendants are sued individually as well as in their official capacities, the bill is, in practical effect, a suit against the State of Alabama, and for aught that appears in the bill, the State has not given its consent to be so sued and no court has jurisdiction of said suit without the State's consent.

A. A. Carmichael, Individually and as Attorney General of the State of Alabama, Appearing Per se and as Solicitor for all of the Defendants. Chas. L. Rowe and Peyton D. Bibb, Assistant Attorneys General of the State of Alabama. Inge & Stallworth, of Counsel.

[File endorsement omitted.]

[fol. 42] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDMENT TO MOTION TO DISMISS—Filed November 18, 1936

Come now the defendants with leave of court and amend their motion to dismiss the amended Bill of Complaint, heretofore filed in this cause, by adding thereto the following separate and several grounds:

8. That the Bill of Complaint as amended in so far as it seeks to obtain a declaration of any claim, right or immunity of the plaintiff under the provision of the Federal Declaratory Judgments Act (Section 274-D, the Judicial Code, 28 U. S. Code Annotated Section 400,) is without equity and not properly within the jurisdiction of this honorable court.

9. That the amended Bill of Complaint insofar as it seeks a declaration by this court under the Uniform Declaratory Judgments Act of the Legislature of Alabama, approved September 7, 1935, (Act No. 355, General Acts 1935, page 777) of any right privilege or immunity, claimed by the plaintiff with reference to the Alabama Unemployment Compensation law or Titles III and IX of the Federal Social Security Act, or the Federal Social Security Act as a whole, is without equity and is not properly within the jurisdiction of this honorable court.

10. For that this honorable court especially convened pursuant to the provisions of 28 U. S. Code Annotated Section 360, is without jurisdiction to hear and determine the issues [fol. 43] raised by the Bill of Complaint as amended by virtue of the fact that the Bill of Complaint as amended is not such a suit as is contemplated by such statute but has been converted by such amendment into a proceeding which seeks a declaration, generally of the plaintiff's alleged rights and immunities, under the provisions of the Federal Declaratory Judgments Act (Section 274-D, Judicial Code, 28 U. S. Code, annotated Section 400) with reference to the Alabama Unemployment Compensation law, the Federal

Social Security Act and and Titles III and IX of the Federal Social Security Act.

A. A. Carmichael, Individually and as Attorney General of the State of Alabama, Appearing Per Se and as Solicitor for all of the Defendants. Chas. L. Rowe and Peyton D. Bibb, Assistant Attorneys General of the State of Alabama. Inge & Stallworth, of Counsel.

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[fol. 44] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DIRECTING ISSUANCE OF NOTICE OF SUIT, ETC.—Filed November 9, 1936

This cause came on to be heard upon ex parte showing by the plaintiff as follows:

(1) The amended bill of complaint filed herein November 6, 1936, seeks among other things relief be final decree under the Federal Declaratory Judgments Act and under the Alabama Uniform Declaratory Judgments Act, in relation to the validity of Titles III and IX of the Federal Social Security Act.

(2) This action is sought be reason of the fact that the effec-iveness of the Alabama Unemployment Compensation Law, directly involved in this proceeding, is by its terms, as amended by Act No. 156, Acts 1936, p. 176; and Act No. 105, Acts 1936, p. 228, made ineffective conditioned upon a declaration of invalidity of Titles III or IX of said Federal Social Security Act or said Act in its entirety.

(3) That plaintiff cannot determine, in advance of an adjudication as to the validity of said Titles III or IX of said Federal Social Security Act, or said Act in its entirety, whether or not the said Alabama Unemployment Compensation Law is effective or is null and void.

[fol. 45] (4) The bill of complaint as amended prays that notice or process issue to Harwell G. Davis as Collector of Internal Revenue, and that notice of the proceeding should also be given to the United States District Attorney

for the Middle District of Alabama and by mail to the Attorney General of the United States and to the Federal Social Security Board.

Upon consideration thereof and reserving all questions as to the effect or result of such notice or service,

It is Ordered that the Clerk of this court issue notice of this suit in the usual form to Harwell G. Davis as Collector of Internal Revenue, with copy of this order attached, to be served by the Marshal, and that copy of this order and of the amended bill of complaint be mailed or delivered by the Clerk to the U. S. Attorney for the Middle District of Alabama and to the Attorney General of the United States, and to the Federal Social Security Board, Washington, D. C., for such appearance or representations as they may see fit to propose herein on the hearing set for this cause on November 18th, 1936, or otherwise.

Given, this 9th day of November, 1936.

(Signed) C. B. Kennamer, U. S. District Judge.

[File endorsement omitted.]

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[fol. 46] In United States District Court

[Title omitted]

Notice of Motion, etc.

Messrs. Lucien D. Gardner, Jr., Joseph F. Johnston and Forney Johnston, Care Cabiniss & Johnston, Solicitors for the Plaintiff.

Please take notice that on Wednesday morning, November 18, 1936, at 9 o'clock in the forenoon or as soon thereafter as counsel may be heard we shall present a motion, a true copy of which is attached hereto to the court at its court room in Montgomery, Alabama.

Dated November 16th, 1936.

James E. Murphy, Special Assistant to the Attorney General. Thos. D. Samford, United States Attorney.

Service of the foregoing notice and a copy of the accompanying motion is acknowledged this November 18, 1936, and there is no objection.

Cabaniss & Johnston, Solicitors for the Complainant.

[fol. 47] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS—Filed November 16, 1936

Now comes Harwell G. Davis, United States Collector of Internal Revenue for the Collection District of Alabama, appearing by his solicitors, Robert H. Jackson, Assistant Attorney General of the United States and Andrew D. Sharpe and James E. Murphy, Special Assistants to the Attorney General of the United States and respectfully moves the Court to dismiss the bill of complaint as amended as to him for the following reasons:

1. This Court is without power or jurisdiction to render a declaratory judgment respecting the validity of the Federal Social Security Act or the taxes imposed thereby.

2. This Court is without power or jurisdiction in this proceeding to grant any relief or enter any decree against or respecting the said Harwell G. Davis, either individually or in his official capacity as Collector of Internal Revenue.

3. The said Harwell G. Davis is neither a proper, necessary or indispensable party to this proceeding either individually or as said United States Collector of Internal Revenue.

[fol. 48] 4. The bill of complaint as amended sets forth no facts sufficient to constitute a cause of action in law or in equity against said Harwell G. Davis.

5. This Court is without jurisdiction to entertain this suit as against said Davis because it is in substance and effect against the United States which is an indispensable party and which has not consented to be sued or waived its immunity from suit.

6. Because no relief is prayed in the complaint as against the said Harwell G. Davis and he is not made a party hereto.

7. Because this Court has no jurisdiction over said Davis or the United States or the subject matter of this cause in so far as said cause seeks a decree or judgment respecting the Federal Social Security Act.

8. There is a misjoinder of causes of action because an equitable cause of action to enjoin officials of the State of

Alabama from applying or enforcing a State law is joined with a cause of action praying a declaratory judgment.

9. Because the bill of complaint as amended fails to present an actual or justiciable controversy between said Harwell G. Davis and the plaintiff herein.

Wherefore, said Davis prays that the foregoing motion be granted and the bill of complaint as amended be dismissed as to him with costs against the plaintiff.

Dated November 14, 1936.

(Signed) Robert H. Jackson, Assistant Attorney General. Andrew D. Sharpe, Special Assistant to the Attorney General. James E. Murphy, Special Assistant to the Attorney General. Thomas D. Samford, United States Attorney.

[File endorsement omitted.]

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[fol. 49] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF MOTION, ETC.

Messrs. Lucien D. Gardner, Jr., Joseph F. Johnston and Forney Johnston, C/o Cabiniss & Johnston, Solicitors for the Plaintiff:

Please take notice that on Wednesday morning, November 18, 1936, at 8 O'Clock in the forenoon or as soon thereafter as counsel may be heard we shall present a motion, a true copy of which is attached hereto to the court at its court room in Montgomery, Alabama.

Dated November 16th, 1936.

(Signed) James E. Murphy, Special Assistant to the Attorney General. Thomas D. Samford, United States Attorney.

Service of the foregoing notice and a copy of the accompanying motion is acknowledged this November 18, 1936, and there is no objection.

Cabaniss & Johnston, Solicitors for the Complainant.

[fol. 50] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS—Filed November 16, 1936

Now comes Thomas D. Samford, United States Attorney for the Middle District of Alabama, appearing by his solicitors, Robert E. Jackson, Assistant Attorney General of the United States and Andrew D. Sharpe and James E. Murphy, Special Assistants to the Attorney General of the United States and respectfully moves the Court to dismiss the bill of complaint as amended as to him for the following reasons:

1. This Court is without power or jurisdiction to render a declaratory judgment respecting the validity of the Federal Social Security Act or the taxes imposed thereby.

2. This Court is without power or jurisdiction in this proceeding to grant any relief or enter any decree against or respecting the said Thomas D. Samford, either individually or in his official capacity as United States Attorney.

3. The said Thomas D. Samford is neither a proper, necessary or indispensable party to this proceeding either individually or as said United States Attorney.

[fol. 51] 4. The bill of complaint as amended sets forth no facts sufficient to constitute a cause of action in law or in equity against said Thomas D. Samford.

5. This Court is without jurisdiction to entertain this suit as against said Samford because it is in substance and effect against the United States which is an indispensable party and which has not consented to be sued or waived its immunity from suit.

6. Because no relief is prayed in the complaint as against the said Thomas D. Samford and he is not made a party hereto.

7. Because this Court has no jurisdiction over said Samford or the United States or the subject matter of this cause in so far as said cause seeks a decree or judgment respecting the Federal Social Security Act.

8. There is a misjoinder of causes of action because an equitable cause of action to enjoin officials of the State of Alabama from applying or enforcing a State law is joined with a cause of action praying a declaratory judgment.

9. Because the bill of complaint as amended fails to present an actual or justiciable controversy between said Thomas D. Samford and the plaintiff herein.

Wherefore, said Samford prays that the foregoing motion be granted and the bill of complaint as amended be dismissed as to him with costs against the plaintiff.

Dated November 16th, 1936.

(Signed) Robert H. Jackson, Assistant Attorney General. Andrew D. Sharpe, Special Assistant to the Attorney General. James E. Murphy, Special Assistant to the Attorney General. Thomas D. Samford, United States Attorney.

[File endorsement omitted.]

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[fol. 52] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF MOTION, ETC.

Messrs. Lucien D. Gardner, Jr., Joseph F. Johnston and Forney Johnston, C/o Cabiniss & Johnston, Colicitors for the Plaintiff:

Please take notice that on Wednesday morning, November 18, 1936, at 9 O'Clock in the forenoon or as soon thereafter as counsel may be heard we shall present a motion, a true copy of which is attached hereto to the court at its court room in Montgomery, Alabama.

Dated November 16th, 1936.

(Signed) James E. Murphy, Special Assistant to the Attorney General. Thomas D. Samford, United States Attorney.

Service of the foregoing notice and a copy of the accompanying motion is acknowledged this November 18, 1936, and there is no objection.

(Signed) Cabaniss & Johnston, Solicitors for the Complainant.

[fol. 53] IN UNITED STATES DISTRICT COURT

[Title omitted]

SPECIAL APPEARANCE AND MOTION AS TO JURISDICTION—Filed November 16, 1936

Now comes the Attorney General of the United States, Homer S. Cummings, appearing specially for the sold purpose of this motion to object to jurisdiction, by his solicitors, Robert H. Jackson, Assistant Attorney General of the United States, Andrew D. Sharpe and James E. Murphy, Special Assistants to the Attorney General of the United States and Thomas D. Samford, United States Attorney for the Middle District of Alabama, and for no other purpose, and moves this Honorable Court to vacate as to him the order dated November 9, 1936, respecting service of notice of this suit upon him and directing him to file answer or other defenses to the alleged amended bill of complaint herein and further moves this Court to quash, vacate and set aside as to him all attempted service and return of service thereof and any and all writs or process issued pursuant to said order and the attempted service and return of service thereof and all action taken in respect to him under or pursuant to or by virtue thereof for the following reasons:

[fol. 54] 1. That he, said Homer S. Cummings, is a resident of the City of Washington, in the District of Columbia, that the official residence of the Attorney General of the United States is in said City of Washington, that said Homer S. Cummings is not a citizen or resident of the State of Alabama nor within the United States Judicial District for the Middle District of Alabama and is not subject to the service of process therein; that the only valid service of process possible against him under and pursuant to the laws and rules in such case made and provided is personal service upon him within the Middle Judicial District of Alabama and that no such service has been or can be had, but that the aforesaid order and the service attempted to be made of the same and of all process issued pursuant thereto is wholly void and of no effect, as to him, all of which appears from the records, files and papers in this cause and from the said order and the return of service herein and from the attached affidavit, to all of which reference is hereby expressly made.

Wherefore, said Homer S. Cummings prays that this motion be granted.

(Signed) James E. Murphy, Special Assistant to the Attorney General. Thomas D. Samford, United States Attorney.

Appearing specially for the above-stated purpose only.

Dated November 16, 1936.

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[fol. 55] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT IN SUPPORT OF SPECIAL APPEARANCE AND MOTION AS TO JURISDICTION

Homer S. Cummings, of Washington, D. C., being first duly sworn, deposes and says in connection with the above-named matter:

1. That he is the Attorney General of the United States.

2. That he is not and has not been a resident or citizen of the State of Alabama or within the Middle Judicial District of Alabama.

3. That no papers in connection with said proceeding have been served upon him personally or by leaving a copy thereof at his dwelling house or his usual place of abode or with any adult who is a member of or resident in his family.

4. That he has received no notice or service in connection with this proceeding except the receipt of an ordinary unregistered letter, a true copy of which is attached, with which was enclosed a copy of an amended bill of complaint. Said letter was received in the office of said Attorney General at Washington, D. C., on November 12, 1936. Said bill of complaint is undated and contains no statement respecting the date of filing with the Clerk of Court or other means of identification as to date except an affidavit of one H. D. Warner attached thereto which is dated November 5, 1936.

(Signed) Homer S. Cummings.

Sworn to and subscribed before me on this 14th day of November, 1936. (Signed) Ugo J. A. Carusi, Notary Public. (Seal.) Ugo J. A. Carusi, Notary Public, District of Columbia.

[fol. 56] Copy

Department of Justice,

United States District Court,

Office of the Clerk,

Middle District of Alabama

Montgomery, Ala., November 18, 1936.

The Attorney General, Washington, D. C.

Dear Sir:

Pursuant to an order made on November 9, 1936, in the case of The Gulf States Paper Corporation, a Corporation, versus A. A. Carmichael, individually and as Attorney General of the State of Alabama, et als., No. E-692, I am mailing you herein copy of this said order, copy of amended bill and subpoena in equity.

Yours very truly, (Signed) O. D. Street, Jr., Clerk,
U. S. District Court.

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[fol. 57] [File endorsement omitted]

In United States District Court

[Title Omitted]

Notice to Vacate or Modify Order Directing Issuance of Notice of Suit, etc.—Filed November 18, 1936

Now comes the Plaintiff by its Solicitor, Forney Johnston and respectfully moves the Court

1. To vacate or modify the order dated November 9th, 1936, directing the Clerk of this Court to issue notice of this suit to Harwell G. Davis, Collector of Internal Revenue, to Thos. D. Samford, United States Attorney for the Middle District of Alabama, and to the Attorney General of the United States and to the Federal Social Security Board, in so far as same may be construed or subject to construction as an order directing the issue of process or making said persons, officials or agencies parties to this suit.

2. To vacate, set aside and quash any and all subpoenas or process issued to said Collector of Internal Revenue, said

United States Attorney, said Attorney General of the United States and said Federal Social Security Board, and to set aside and quash any service or purported or attempted service of process and any return thereof as services of process and adjudging that any such notice or purported service shall stand and is construed solely as notice of the proceedings for such intervention in the matter as they might on their own motion deem appropriate.

[fol. 58] 3. To amend Plaintiff's Amended Bill of Complaint by striking therefrom the next to the last paragraph thereof, which reads as follows:

"Plaintiff further prays that in addition to the parties hereinabove named or described as defendants, such notice or process issue to Harwell G. Davis, the United States Collector of Internal Revenue for the District of Alabama, whose residence is at Birmingham, in the Northern District of Alabama."

The Plaintiff disclaims any prayer or intention to seek or obtain in this proceeding any affirmative relief against any of the Federal officers or agencies mentioned.

(Signed) Forney Johnston, Of Counsel for Plaintiff.

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ORDER

Upon consideration of the foregoing motion, it is ordered that the same be granted, that the order directing notice be vacated or modified accordingly, that nothing done pursuant thereto shall be regarded as the service of process requiring the persons or agency served or notified to appear herein as a party or as having any effect other than to notify them of the pendency of the proceeding and of the prayer for declaratory judgment.

Given this 18th day of November, 1936.

(Signed) Samuel H. Sibley, For the Court, U. S. Circuit Judge. Robert T. Ervin. C. B. Kennamer.

[fol. 59] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed November 18, 1936

Come the defendants, jointly, separately and severally, without waiving their right or the rights of either of them to have this cause dismissed upon the grounds set forth in the motion to dismiss filed herein, and reserving those rights, the defendants jointly, separately and severally, for answer to the bill of complaint as amended, state as follows:

(1) For answer to paragraph one of the bill of complaint as amended, the defendants say that this plaintiff has no right to maintain this suit as a class suit within the meaning of Equity Rule 38 and that no other employer than the plaintiff herein has such an interest in the subject-matter of this suit within the purview of Equity Rule 37 as to allow any such other employer to intervene herein. Further answering, the defendants say that they are not informed of the time or place of the organization of the plaintiff's business or the kind, character or extent of its operation within the State of Alabama, but demand strict proof of the averments in reference thereto.

(2) For answer to paragraph two of the bill of complaint as amended, the defendants admit the averments thereof, except that the defendants say that they are not the only officials of the State of Alabama charged with the enforcement of the Alabama Unemployment Compensation Act referred to. The defendants aver that under the Constitution and laws of the State of Alabama, the Governor of the State [fol. 60] of Alabama is charged with the administration and enforcement of the laws thereof, including the Alabama Unemployment Compensation Act, and that the Chairman and Associate Members of the Alabama Unemployment Compensation Commission were appointed by Bibb Graves, the Governor of the State of Alabama, and are engaged in their duties in the enforcement of the Alabama Unemployment Compensation Act under his direction and control, and that Bibb Graves, the Governor of Alabama, is a necessary and indispensable party to this suit but has not been joined herein as a party defendant.

(3) For answer to paragraph three of the bill of complaint as amended, the defendants admit that the Federal Social Security Act, being Public #271, Seventy-fourth Congress, H.R. 7260, was duly enacted by the Congress of the United States and approved on August 14, 1935. Further answering, the defendants say that the purpose, intent and scope of such Act is apparent from the terms and provisions thereof and that the plaintiff's statement and conclusion regarding such purpose is irrelevant and immaterial to the issues in this suit.

(4) For answer to paragraph four of the bill of complaint as amended, the defendants say that the Alabama Unemployment Compensation Act, General Acts of Alabama 1935, page 950, et seq., was properly enacted by the Legislature of Alabama and approved by the Governor on September 14, 1935, in proper and constitutional exercise of the reserved protective police power of the Sovereign State of Alabama. Further answering, the defendants say that the plaintiff's statements in reference to the reason or reasons why the Alabama Act was adopted are untrue and wholly irrelevant to the issues before the court in this cause. Defendants further say that the Alabama Act was not adopted without consideration and by the most expeditious procedure but say that as early as July 30, 1935 the expected enactment of the Federal Social Security Act was brought to the attention of both Houses of the Legislature; each House adopted a [fol. 61] joint resolution under which a joint committee of representatives from the Senate and from the House was raised to consider the Federal Act in relation to conditions in the State of Alabama and to recommend whether or not the Legislature, then in session, should enact any legislation relating to unemployment compensation insurance; that on, to wit, August 20, 1935, one of the Senate members of that committee offered in the Senate the bill which, with amendments, today constitutes the Alabama Unemployment Compensation Act. On the same August 20th, a bill on the same subject was offered in the House by one of the House Members of said committee. The bills were referred to the Rules Committee of the House in which they were respectively offered and were reported favorably. The Senate bill was so reported and amended August 22nd and finally passed and sent to the House for consideration August 27th.

The bill was under consideration in the House until its

final enactment and signing by the Speaker of the House on September 10th, was delivered to the Governor on September 13th and by him approved on September 14th, 1935, all being done strictly in accord with the constitutional requirements concerning the making of laws in Alabama.

(5) For answer to paragraph five of the bill of complaint as amended, the defendants admit that the Alabama Act requires contributions, in the amounts and at the times and from the persons therein particularly provided, but deny that such Act imposes either heavy or severe penalties for the violation of the terms thereof. Further answering, the defendants say that the only penalties provided for by the terms of said Act as amended are for proper interest on delinquent payments and a criminal penalty for willful violations or fraud, and none of which contributions or penalties can be enforced by these defendants or by any other person, save by a proper proceeding in a court of competent jurisdiction against the employer, such as this plaintiff, in [fol. 62] which the defendant may adduce and present any legal or equitable defense and every right, defense or immunity which the plaintiff claims or seeks to enforce in this suit.

Further answering, the defendants say that they admit that the plaintiff, as an employer of eight or more persons within the meaning of the Alabama Act, is under the duty to make the contributions therein required, and that plaintiff is obligated to make such contributions for the year 1936. Defendants further say that the contribution payable by the employers subject to the terms of the Act increases from 90/100 of 1% for 1936 to Two and 70/100 per cent for 1938, 1939 and 1940, but say that the percentage does not increase to a maximum of 4% for 1941 and thereafter, but remains at Two and 70/100 per cent until adjusted on the basis of experience thereafter, as provided by Section 4 of the Alabama Act as amended. Defendants further say that the percentage or percentages which may obtain for years subsequent to 1940 and other provisions of the Act which have not now been and cannot now be brought into operation, are immaterial and irrelevant to the issues in this suit.

Further answering, the defendants say that Section 5 (a) of the Alabama Act provides:

"Payment of Benefits.—After contributions have been due under this act for two years, benefits shall become payable."

Defendants deny that meanwhile the funds collected under the Alabama Act will accumulate in the Federal Treasury, but aver that, under the terms of the Alabama Act such collections will be deposited in the special Unemployment Trust Fund created by Section 904 of the Social Security Act, and such deposit will remain at all times subject to the exclusive discretion of the Alabama Unemployment Compensation Commission with regard to its withdrawal therefrom.

(5½) For answer to paragraph five and one-half of the bill of complaint as amended, the defendants deny each and [fol. 63] every averment and statement therein made or contained, except that by Section 18 of the Alabama Act as amended, the Legislature of Alabama reserved the right to amend or repeal the Alabama Act at any time.

(b) Further answering, the defendants deny that employers of less than 27% of employees gainfully employed in Alabama are now subject to the Alabama Act, and deny that 30% of all persons in the employ of businesses not exempted under the terms of the Act are employed by employers with less than eight employees, and deny that 50% of all workers gainfully employed in Alabama are employed in agriculture and deny the materiality of any averment regarding the number of persons employed in agriculture in Alabama. The defendants further deny that 75% of the total of all persons gainfully employed in Alabama are exempted from the terms of the Act. The defendants deny that the employees or persons exempted or excluded from the operation of the Act are as much or more subject to the likelihood of future unemployment beginning October 1, 1938, than those now in the employment of the plaintiff, and further deny the materiality of any averment in respect thereto to the proper issues in this case.

Further answering the defendants aver that the classes of persons or services excluded from the provisions of the Alabama Act, as set out in Section 2 (g) as amended, are as follows:

"The term 'employment' shall not apply to:

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Service performed as an officer, bar pilot, or member of the crew of a vessel on the navigable waters of the United States;

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(6) Service performed in the employ of a carrier engaged in interstate commerce and subject to the Act of Congress [fol. 64] known as The Railway Labor Act; as amended or as hereafter amended. Service performed by those engaged as solicitors or agents for Insurance Companies.

(7) Service performed in the employ of a state, or political subdivision thereof, or an instrumentality of one or more states or political subdivisions;

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual."

It readily appears that these exclusions from the scope of the Act not only constitute a reasonable classification, but are necessary in dealing with the problem of industrial unemployment.

(6) For answer to paragraph six of the bill of complaint as amended, the defendants deny each and every averment and statement therein contained except defendants admit the liability of plaintiff for accrued contributions to the Alabama Unemployment Fund as stated in this sixth paragraph and that the probabilities are that plaintiff will be required to pay as therein stated and possibly more than is therein stated.

The Alabama Act establishes a compulsory scheme of unemployment insurance reserves to be raised by contributions by employees and employers and to be administered

for the benefit of the General Public Welfare. Whether such scheme has been stimulated or forced by the Federal Government is immaterial. In no essential is it controlled by the Federal Government. These contributions are pooled in the Federal Treasury for distribution to the beneficiaries under the terms of the Act. The Alabama Act has already been amended three times, all on the same day, April 21, 1936. The scheme does assure the plaintiff's employees of benefits in event of their unemployment.

Defendants further answer that the plaintiff and other employers have exactly the assurance of right and just dealing by the Legislatures of Alabama, as governs the businesses and the lives and the properties of all citizens of [fol. 65] Alabama, and this Honorable Court is bound to assume that in the future the Legislatures of Alabama will righteously, wisely and constitutionally execute the duties of their office, however much the plaintiff has averred or may aver to the contrary.

(7) For answer to the seventh paragraph of the bill of complaint as amended, the defendants deny that the validity of the Alabama Unemployment Compensation Act as amended is dependent upon the validity or constitutionality of the Federal Social Security Act or of Title III or Title IX thereof. The Act and amendments thereof, were duly and constitutionally enacted by the Legislature of Alabama and duly and properly approved by the Governor of Alabama, in lawful and constitutional exercise of the reserved police powers of the Sovereign State of Alabama and that no section of the Alabama Act as amended violates any provision of either the Constitution of the State of Alabama or of the Constitution of the United States.

(8) For answer to paragraph eight of the bill of complaint as amended, the defendants deny the averments therein contained. Further answering, the defendants deny that the averments with respect to the specific number of persons employed by plaintiff, their hours and character of work and the alleged actual continuity of plaintiff's operations are irrelevant and immaterial to the real issues in this case.

(9) (a) For answer to paragraph nine of the bill of complaint as amended, the defendants deny that they have demanded of the plaintiff any information other than reports

covering contributions payable, employment and directly related matters required of employers by Section 10 (g) of the Alabama Act; the defendants deny that they have notified the plaintiff and other employers subject to the Act that it requires or will require the keeping of elaborate records by the plaintiff; the defendants admit that they have notified the plaintiff that, under the provisions of the Alabama Act the plaintiff is required to file the monthly reports and to pay the proper contributions for itself and to with- [fol. 66] hold and pay over to the Alabama Unemployment Compensation Commission the proper contributions due from plaintiff's employees.

(b) Further answering, the defendants deny that they have notified the plaintiff that they will seek enforcement of any penalty, criminal or otherwise, provided by the Alabama Act further than, as required by the Act, they have tried to give publicity to the Act and its provisions and they state that no penalty which is provided by the Alabama Act can be imposed or enforced against the plaintiff except in an orderly proceeding in a court of competent jurisdiction and in which proceeding the plaintiff can assert by way of defense every claim, right of immunity which it claims or seeks to enforce in this suit and any other legal or equitable defense which it might have.

(c) Further answering, the defendants say that they have not threatened or advised the plaintiff, or any other employer subject to the provisions of the Alabama Act, that in the absence of compliance by the plaintiff with the provisions of the Alabama Act, they will not issue certificates with respect to credits or off-sets under Title IX of the Federal Act, and state further that they have no power to compel the granting or refusal of any credit under the Federal Act and that unless the contributions required of the plaintiff are paid, no receipt therefor such as might entitle plaintiff to claim any credit under the Federal Act can be issued.

(10) (a) For answer to paragraph ten of the bill of complaint as amended, the defendants deny the averments thereof and further state that the statements therein of the plaintiff's theory of the conception and policy of the Alabama Act are wholly irrelevant and immaterial to the issues in this case. Further answering, the defendants state that

the Alabama Act as amended was duly enacted by the Legislature of Alabama and approved by the Governor of Alabama, in proper and reasonable exercise of the police power of the Sovereign State of Alabama in the proper advance-
[fol. 67] ment and protection of the public health, the public morals and the public welfare.

Further answering, the defendants say that there has been no singling out of the plaintiff for particular and special treatment different from that accorded other employers, nor is the validity of the Alabama Act to be determined by application of the meager yard-stick of the plaintiff's individual and isolated alleged record of operation; but that, under the terms of the Alabama Act, as well as the Federal Act, burdens and responsibilities are fixed generally upon employees in industry as a whole throughout the State and the Nation, from which the evils of unemployment have been shown, by common experience known to all, to have arisen.

(11) (a) For answer to paragraph eleven of the bill of complaint as amended, the defendants deny each and every averment therein contained.

(b) Further answering, the defendants state that they deny that the plaintiff's business is not hazardous by nature, and further deny that in the nature of plaintiff's business there has been nothing to invite any mediation, regulation or intervention by the State of Alabama in the negotiation of plaintiff's wages or salaries paid its employees or to dismissals of employees or the cessation of plaintiff's operation.

The defendants further answering say that plaintiff's business consists in the operation of a large plant converting raw pine wood into finished paper and employing large machines, large vats filled with steam and boiling water, highly charged with chemical compounds and requiring the handling by men, and by machines in the presence of men, of large and unwieldy and heavy objects and the employment of large quantities of electricity and steam, both dangerous to human life and that accidents do occur, cripples are made and deaths caused among the plaintiff's employees in and by the plaintiff's operations of its business.
[fol. 68] Further answering, the defendants deny the materiality or relevancy of any such allegations to the issues in this suit.

(c) The defendants deny that the large majority of plaintiff's employees established their contract relationship prior to the adoption of the Alabama Act and further deny that the plaintiff now has specific and identifiable contracts of employment with its employees now in effect and which were executed prior to the passage and approval of the Alabama Act, and further deny that the allegation of the bill of complaint in reference thereto is material or relevant to the issues in this case.

(d) Further answering, the defendants say that it does not appear with sufficient clarity what plaintiff intends to aver by the allegations in reference to the efficiency or contentment of plaintiff's employees and the avoidance of "turn over", but whatever fact is sought to be averred thereby, the defendants deny, and the defendants further deny the propriety of any conclusion or fact or law sought thereby to be drawn.

(e) The defendants are not advised whether the plaintiff has abided by other proper legislative enactments of the State of Alabama, relating to the employee relationships or business of the plaintiff, and denies the materiality of any of the averments in reference thereto to the issues in this case. It conclusively appears from the averments of its bill of complaint that it has not and does not intend peaceably to abide by and comply with the proper and reasonable requirements of the Alabama Unemployment Compensation Act.

(f) The defendants deny that the risk of unemployment originating in plaintiff's plant is, as to the future, remote and imperceptible and that the Alabama Act is unwarranted. Defendants state that such speculative statements of the bill are irrelevant and impertinent to the issues in this case. Defendants further state that the operation of the plaintiff's business and its relationship with its employees and its existence as a unit of the entire industrial [fol. 69] make-up of the body politic of the State of Alabama is a fit and proper subject for the exercise by the Legislature of Alabama reasonably of the reserved police power of the Sovereign State of Alabama.

(g) Defendants are not advised of the true facts in reference to the effect of the operation of plaintiff's business upon any other given specific business in the State of Ala-

bama and whether the plaintiff's operation may have caused a curtailment of operation or employment therein, nor whether the plaintiff's operation in fact has contributed employment to any other businesses in the State of Alabama, and in answer thereto, the defendants say that such averments are pure conjecture by the plaintiff and are immaterial and irrelevant to the issues in this case, but to the extent to which such statements might be deemed relevant the defendants demand strict, full and categorical proof of all true facts in reference thereto.

(h) Further answering, the defendants say that they are not advised whether the citizens of Tuscaloosa County aggressively solicited the location of plaintiff's plant at its present location, but defendants admit that by public subscription generously and widely extended the citizens of Tuscaloosa County, Alabama, contributed substantially to the plaintiff's location of its business at that place and thus aided plaintiff in a most substantial financial manner and in a manner which, the defendants are informed and believe, is not accorded or available to businesses in general in the State of Alabama. Further answering, the defendants say that there is no legal or practical assurance that the plaintiff will or will not be able to operate its business definitely in the future or will be able to afford employment to the large number of employees which it alleges that it now employs or that the plaintiff will not shut down [fol. 70] its operation altogether and throw its present employees out of employment and upon the public agencies for support; nor is there any legal or practical assurance that, plaintiff's business having admittedly been the beneficiary of a large subsidy from the citizens of Tuscaloosa County in its inception, the plaintiff will not again, as a condition to its continued operation and to save the community of the disastrous effect of discontinuing of employment of its employees, again demand that the citizens of Tuscaloosa County "by public subscription generously and widely extended", further contribute to the cost of plaintiff's operation. Further answering, the defendants say that even if plaintiff's business has not in the past contributed to the problem of unemployment in the State of Alabama, which conclusion the defendants deny, the defendants say that it appears from the plaintiff's own averments that the public subscription, generously and widely extended, by the peo-

ple of Tuscaloosa County contributed in large measure to the alleged apparent success of plaintiff's operations.

(12) Answering the twelfth paragraph of the amended bill defendants say that they are advised that insofar as said paragraph alleges conclusions either of fact or of law, they neither deserve nor require an answer. Insofar as said paragraph alleges facts the defendants deny the allegations. The defendants deny that the Alabama Unemployment Act singles out plaintiff to compel satisfaction by it of any desire, policy or obligation of the State further than to state a duty owing by the plaintiff while doing business in this State and defendants deny that the Act deprives the plaintiff of property, freedom of contract or of liberty, or that it takes property without compensation or for private use or impairs the obligation of any contract of plaintiff, or that it violates either the Federal or the State Constitutions.

(13) Answering the thirteenth paragraph of the amended bill the defendants deny that the pooling of contributions [fol. 71] provided for by the Act appropriates the contributions to remote or conjectural uses, or throws upon the plaintiff any risk or burden not related to its business or property.

(14) Answering the fourteenth paragraph of the amended bill, the defendants deny that the Act exacts contributions to a fund which is arbitrary, or in effect, confiscates property and aver that the unemployment fund is not arbitrary and is rationally related to plaintiff's business and employer relation.

(15) Answering paragraph fifteen of the amended bill these defendants deny the allegations thereof and say that the unemployment compensation fund set up by the Alabama Act has a direct and reasonable relation to plaintiff's business as an employer of more than eight persons and to the general welfare of the State and Nation and is not arbitrary but is reasonably calculated to materially lessen the evils of industrial unemployment, to which the plaintiff's business and all other industries of the nation are subject.

(16) Answering paragraph sixteen of the amended bill defendants deny that unemployment compensation must take the form of a poor law in Alabama and say that the sug-

gestion of relief of poverty is wholly divergent from the fundamentals of the Alabama Act, which is definitely an insurance scheme wherein one deposits in a fund with reasonable expectation of benefits in keeping therewith. Neither Section 88 nor 93 of the Alabama Constitution has any relation whatever to the scheme of the Act, whose theory of compensation is rightly based upon contribution and not upon indigency. These defendants further answer that the counties are not directly informed and concerned in the problems of unemployment in the State and their local interests and influences definitely preclude them from rightly administering any state-wide unemployment compensation law, and the Alabama Act does not transfer the administration to the Federal Government but keeps it definitely in the hands of the Unemployment Compensation Commission of Alabama

[fol. 72] (17) Answering paragraph seventeen of the amended bill, defendants deny its allegations and say that the Act transfers no burden but fixes upon plaintiff and its employees a definite duty to contribute to a fund to compensate reasonably expected losses from unemployment which America's experience and the experience of Alabama has shown to be inherently a result of the existing industrial system, and the Act is not arbitrary but is a reasonable effort to make proper provision against the evils of industrial unemployment.

(18) Answering paragraph eighteen of the amended bill, defendants deny the allegations thereof and answer that the Act has nothing to do with poor relief as contemplated by Section 88 of the Constitution of Alabama and expressly provides that one who works and contributes as provided by the Act shall be eligible for the participation in its benefits should his circumstances so demand. Under the scheme of the Act a beneficiary receives that for which he has bought and paid for, not poor relief or favor, and in that respect is not an arbitrary regulation of plaintiff's business in violation of any constitution but is a reasonable and proper exercise of the police power for the public welfare.

(19) Answering paragraph nineteen of the amended bill defendants say the Act does not violate Section 93 of the Constitution and defendants say that the Act does not appropriate any state money or credit, nor does it appropriate

the funds of individuals but does require as a condition of exercising the privilege of employing more than eight persons as provided by the Act, that the plaintiff must contribute to a fund in some reasonable degree insuring the employees against the loss of unemployment and insuring the plaintiff itself against the loss which the State and the Nation at large necessarily must suffer from uncompensated evils of unemployment.

(20) Answering paragraph twenty of the amended bill the defendants deny its allegations and allege that the Act makes no expropriation of plaintiff's funds for private purposes but properly requires the plaintiff, in its business as alleged in the bill, to contribute to the maintenance of an insurance reserve, which is a proper exercise of the police power, insofar as it is vested in the Legislature.

[fol. 73] (21) Answering paragraph twenty-one of the amended bill, defendants deny the allegations thereof and say that the title of the original Act and of the amended Acts contain but one subject which is clearly expressed in the title, as required by the Constitution of Alabama.

(22) Answering paragraph twenty-two of the amended bill, the defendants deny the allegations of paragraph twenty-two and further say that the Act does not unlawfully delegate power nor does it

(a) bind the State to Federal policies;

(b) delegate anything to the Federal Government; nor

(c) subject the power to repeal to the loss of the State; nor

(d) make its existence conditional upon the validity of the Federal Act; nor,

(e) lack certainty, nor is it conditioned upon the future action of the Supreme Court of the United States; nor

(f) make its provisions conditional upon the decision of the Supreme Court; nor

(g) does it conflict with the due process principle as set forth in 274 U. S. 693.

The Act is a valid exercise of the police power of the Legislature; confers upon the agencies created by it only

such authorities as are permitted by the Constitutions; takes advantage of the Federal Act and puts the State of Alabama in the position of cooperating with all of the other states of the United States that recognize that the problem of industrial unemployment is a national problem as much beyond the power of any one state to prevent, regulate or relieve as it is beyond the power of any individual employer, and is a proper effort of the State of Alabama to do its part in furthering the public welfare not only of itself but of the other states and of our nation.

[fol. 74] (23) Answering paragraph twenty-three of the amended bill, defendants deny the allegations thereof and say that the power to amend or repeal the Act confers upon the State no power to expropriate, nor does it express any such power. It is an expression of the people's will and the people's authority to exercise that will as circumstances and the administration of the Act may to the people appear wise and proper. The Act establishes no public fund but reasonably requires the parties subject thereto to pool a small portion of their own funds for their own protection.

(24) Answering paragraph twenty-four of the amended bill, defendants deny the allegations thereof and say that legislation is not required to be based on either records, reports or experience, or hearings or actuarial data as alleged in the paragraph. Its enactment might have been properly based entirely upon the general knowledge the Legislature had, or upon the vast mass of data upon the general subject which had been collected and made public by the Federal Government. The statutory percentages are wholly within the constitutional discretion vested in the Legislators.

(25) Answering paragraph twenty-five of the amended bill, defendants deny the allegations thereof and say that investigations and hearings such as are suggested by the paragraph are no constitutional conditions precedent to legislation. The provision for a change of rate of tax upon certain employees after 1940 is wholly immaterial to the questions presented in this cause at this time. If it be material for the answer as to this, these defendants say the power given to the Unemployment Compensation Commission to fix a rate in 1941, based upon four years experience in administering the act, coupled with the limitation of be-

tween 1½% and 4% for individual employers and an average minimum for all employers of not less than 3 o/o, is a reasonable regulation and device for the proper administra-
[fol. 75] tion of the Legislature's Act, entirely within the due process, the compensation and delegation clauses of the Constitutions.

(26) Answering paragraph twenty-six of the amended bill, defendants deny the allegations thereof and say that whether plaintiff will be benefitted is a proper matter for the Legislature to determine and the benefits of the Act warrant its required contributions.

(27) Answering paragraph twenty-seven of the amended bill, defendants deny the allegations thereof and further say that the contributions required are in no sense taxes and are but reasonable regulations properly made by the State of businesses wherein eight or more persons are employed within the callings prescribed by the Act, and constitutes no expropriation of funds from one class for the benefit of individuals other than the members of that class.

(28) Answering paragraph twenty-eight of the amended bill, defendants deny the allegations thereof and say that the exactions of the Act are not grossly in excess of the objects in view and should experience demonstrate that the required contributions are more than are needed, the reserved right of amendment of the Act is ample protection of those from whom the contributions are required and constitutes no discriminatory or excessive burden upon the plaintiff's business and no violation of due process, although it is admitted that the requirement by the Act that the plaintiff and all other employers of eight or more must contribute to a fund to lessen the evils of unemployment creates a new legal duty upon plaintiff and other employers which experience has demonstrated is not voluntarily recognized.

(29) Answering paragraph twenty-nine of the amended bill, defendants deny that the lack of hearing the plaintiff makes the Act arbitrary or oppressive. These defendants are not informed, other than by plaintiff's bill, as to the [fol. 76] details of the employment alleged in this paragraph and if the allegations are material, demands proof thereof. Defendants deny that the contributions demanded of salaried employees are arbitrary or out of relation to the

benefits proceeding from the plan of the Act and allege that the fact that the salaries are based upon the operation of wage earners definitely demands that any fair plan requires contribution from the salaried as well as the wage-paid worker in industry and the entire exaction is reasonably related to the privilege exercised by the plaintiff and its workers, whether paid salaries or wages.

(30) Answering paragraph thirty of the amended bill, the defendants deny that the validity of the Federal Act or Title III and IX thereof are the test of the existence of the State Act and further answering say that the State Act only provides that it shall come to an end if and when the Supreme Court of the United States shall have determined that the Federal Act is invalid and allege that the provisions of the Alabama Act with reference thereto violates no provision of the Federal Constitution.

(a) The Federal Act does not delegate legislative powers illegally and sets up proper standards for the Federal Social Security Board to follow in discharge of its duties in the execution of the Federal Law and does not provide for any arbitrary or uncontrolled discretion in said Board.

(b) Congress has not sought to coerce and compel or to govern the states as alleged but has recognized the inherent justice in allowing credits on the Federal tax for such contributions as the taxpayer may have properly made towards the Social Security of the nation as provided in the Federal Act.

[fol. 77] (c) Defendants deny that Section 303 (b) of the Federal Act violates the Federal Cons-itution and say that the determination of the Board as to whether or not any taxpayer has contributed to the unemployment compensation fund of the State where he does business was properly left by Congress to the Federal Social Security Board and that Congress has not thereby sought to govern the states.

(d) Defendants deny that Section 903 of the Federal Acts violates the Tenth Amendment and say that Congress has only offered to taxpayer credits for payments made by him in furtherance of the national social security and requires no surrender of State funds to a Federal agency but only requires that the funds, for the payment of which the

credit is given, shall be adequately secured for the purposes for which the national credit is given.

(e) Defendants deny that Section 903 (b) violates the Cons-itution as alleged and say that no discretion is vested in the Federal Board as alleged but that a positive duty under certain fixed conditions are laid upon the Board by the Federal Act and that in so legislating, Congress has not attempted to illegally govern the states.

(f) Section 903(4) does not hamper the State but aids the provisions of its Act and does not violate the Tenth Amendment.

(g) That the Act defers any adjustment by the Board of the amendment of tax upon the plaintiff until 1941 is admitted, but it is denied that the plaintiff is barred for so long from a chance to obtain an adjustment, which is definitely and affirmatively provided for by the express reservation of the right of amendment.

[fol. 78] (h) Defendants deny the allegations of sub-paragraph (h) and answer that the Act does not take for public use any property except as the Congress of the United States is by the Constitution authorized to tax and by the Act does tax the plaintiff.

(i) The Allegations of sub-paragraph (i) are denied and defendants allege that the tax exacted by Title III is Federal revenue and not ear-marked for unemployment compensation insurance, nor does Title IX, in conjunction with Title III, constitute a scheme to illegally induce or compel the states.

(j) The taxes levied by the Act do not violate the Constitution but are within the general taxing power of Congress and they are not designed to expropriate money as charged by sub-paragraph (j).

(k) The taxes levied by Title IX are excise taxes, levied for the purpose of the Government, as authorized by the Constitution.

(l) Said taxes are not levied in an attempt to regulate matters over which Congress has no authority, as alleged. The fact that in the same Act appropriations are made does not as a matter of law so connect the tax and the appropriation as to work any illegality in either.

(31) Answering paragraph thirty-one of the amended bill, the defendants deny the allegations thereof and say that whether the plaintiff obeys the Act or refuses to obey the Act it has a full, fair, complete and adequate remedy at law of all of the things against which it seeks the injunction here, and that the plaintiff will not suffer irreparable injury, as that term is defined in the law, by any of the things alleged in this paragraph of the bill.

[fol. 79] Further answering, the defendants say that, in the event of an adjudication of constitutional invalidity of the Alabama Act by a court of last resort having jurisdiction in the premises, that the plaintiff has an adequate remedy for the recovery of any amounts which it may be required by the Alabama Act to pay in as contributions in its status as an employer and contributions withheld and paid in for and on account of its employees.

As a part of the answer to this paragraph, the defendants specifically refer to Paragraph 5½ of the Alabama Act; and they further say that upon inquiry made by the Attorney General of Alabama to the Secretary of the Treasury of the United States, as to the construction by that Department of the Federal Act insofar as is concerned any provision for the refund of moneys deposited under the Alabama Act in the Unemployment Trust Fund provided for by the Federal Act, in the event that the Alabama Act be held unconstitutional or invalid, that said Secretary of the Treasury forwarded to said Attorney General two rulings of said Department, addressed to the Attorney General of New York and to the Attorney General of California; and advised the Attorney General of Alabama that the said rulings so made represented the views of the Secretary of the Treasury; and that action would be taken, in the event that the contingency arose, as outlined therein.

The two rulings of the said Secretary of the Treasury are as follows:

"The Secretary of the Treasury,
Washington

April 22, 1936.

My Dear Attorney General:

I acknowledge receipt of your letter of April 16, 1936, in which you inquire the views of this Department concerning the disposition of funds deposited in the Unemployment

Trust Fund representing contributions by employers in the State of New York in the event that the United States Supreme Court should reverse the decision of the New York Court of Appeals sustaining the validity of the New York Unemployment Insurance Act.

It is the view of this Department that the money in the Unemployment Trust Fund standing to the credit of a State [fol. 80] agency is and will at all times remain the equitable property of the State or Agency in question. The Treasury Department, in accordance with its interpretation of the law, will under all circumstances honor requisitions duly made by any State agency, to the extent of any balance standing to its credit in the fund.

If the New York State Unemployment Insurance Act should finally be adjudged invalid, this would not in my opinion deprive the State of New York of its equitable interest in the Unemployment Trust Fund. The question how and by whom the money could then be 'duly' requisitioned appears to be primarily a question of state law. Upon satisfactory evidence of the authority of the State Industrial Commissioner to withdraw the money in that contingency, and subject to necessary procedural requirements, I should be prepared to honor a requisition for the full amount standing in the Unemployment Trust Fund to the credit of the State Agency.

Very truly yours, Wayne C. Taylor, Acting Secretary of the Treasury."

"The Secretary of the Treasury,
Washington

June 18, 1936.

"DEAR SIRS:

Receipt is acknowledged of your letter of June 4, 1936, referring further to the withdrawal of contributions deposited by the State of California in the Unemployment Trust Fund established by Section 904 of the Social Security Act, in the event said Act should be declared unconstitutional at some subsequent date.

I regret exceedingly that our letter of May 28 did not contain a copy of the letter of April 22, addressed to the Attorney General of the State of New York on the same subject. You will find a copy of that letter enclosed herewith.

Thank you for the information relative to Section 2 of the California Act as passed by the 1936 session of your legislature. In view of the fact that the California Act would automatically become inoperative in the event of the invalidation of title IX of the Social Security Act, you may be assured that this Department would honor a requisition duly made by the State Agency to the extent of any balance standing to its credit in the fund.

Very truly yours, Josephine Roche, Acting Secretary of the Treasury."

These defendants further allege that, in view of the Departmental Rulings hereinabove set out and in view of the [fols. 81-82] provisions of the laws of the State of Alabama, that, in the event the Alabama Act is declared invalid or unconstitutional by the Supreme Court of Alabama or by the Supreme Court of the United States, that the contributions exacted of the plaintiff and its employees may be refunded to it and to them.

(32) Answering paragraph thirty-two of the amended bill these defendants say that the controversy sought to be raised by the bill is necessarily with respect to Federal taxes and insofar as the bill seeks to have the Court declare rights or other legal relations of the plaintiff affecting the tax levied upon it by the Federal Social Security Act, there is no jurisdiction in this Court to render a declaratory judgment as prayed and the allegations of the thirty-second paragraph set up no fact from which a declaratory judgment would appear to be appropriate. If defendants are mistaken in this, then they say that the Collector of Internal Revenue of the United States at Birmingham, Alabama, is a necessary party to this cause and that the issue to him of notices prayed in the bill is not sufficient to justify the Court in the rendition of any declaratory judgment under the allegations of the bill.

(33) Answering paragraph thirty-three of the amended bill, these defendants deny that the plaintiff is entitled under the Declaratory Judgment Act of Alabama to have the Alabama Act or Title III and Title IX of the Federal Social Security Act declared invalid by decree rendered herein, as alleged in said paragraph 33.

And now having fully answered the bill, these defendants pray to be hence dismissed with their costs.

A. A. Carmichael, Individually and as Attorney General of the State of Alabama, Appearing Per Se and as Solicitor for all of the Defendants. Chas. L. Rowe and Peyton D. Bibb, Assistant Attorneys General of the State of Alabama. Inge & Stallworth, of Counsel.

[fol. 83] *Duly sworn to by A. A. Carmichael. Jurat omitted in printing.*

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[fol. 84] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO SUBMISSION—Filed November 18, 1936

It is Agreed in the above styled cause that the plaintiff's application for an interlocutory injunction as prayed for in its amended bill of complaint shall be submitted to the statutory court upon:

A. The bill of complaint as amended;

B. The orders of the District Judge or Court which have been made or may be made in the case prior to submission;

C. Acceptance or proof of service and notice of such papers as have been served and of such notices and service as may be given.

D. Defendants' motion to dismiss;

E. Defendants' answer filed or to be filed before submission;

F. The written affidavits on behalf of plaintiff not to exceed twelve in number, with copies to be furnished to the attorneys for the defendants not later than the 10th day of November, 1936, with the further understanding that said affidavits shall be approximately in substance and in length as are the copies of affidavits which have been submitted to attorneys for the defendants contemporaneously herewith.

G. Written affidavits on behalf of defendants not to exceed twelve in number and to be filed in court with copies to be furnished to attorneys for the plaintiff not later than the 16th day of November, 1936.

It is further agreed and understood that such affidavits shall be considered by the Court as if affiants had appeared and testified personally as to the substance therein stated, with the further provision that only such portions of said affidavits shall be considered by the Court as may be material, relevant and competent herein, and that neither party admits the truth of the matters or the conclusions contained in the pleadings or affidavits offered by the opposing party.

It is also agreed by the parties, without plaintiff waiving insistence on its said application for an interlocutory [fol. 85] judgment, that said case will be submitted for final decree upon the same pleadings and evidence as set forth above and noted for the submission of the application for the interlocutory injunction.

Dated this 18th day of November, 1936.

Jos. F. Johnston, of Counsel for Plaintiff. A. A. *Carn*, of Counsel for Defendants.

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[fol. 86] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING TEMPORARY INJUNCTION—Filed November 18, 1936

This matter coming on for hearing *that* upon application of plaintiff for a temporary injunction, and the same having been submitted upon the sworn allegations of the bill, and upon testimony offered and noted in open court,

And the court being of the opinion and finding that plaintiff is entitled to a temporary injunction as prayed for in the original bill,

It is, Therefore, Ordered and decreed as follows:

That an injunction to remain in effect until final decree herein be and the same is hereby granted, ordered and issued the plaintiff upon the same terms and upon the same conditions as the temporary restraining order issued herein

by the Honorable C. B. Kennamer, Judge of the District Court with the following exceptions and additions:

a. The expiration date of this temporary injunction shall be the date of final decree in the above entitled proceedings.

b. The Attorney General of Alabama, as counsel of record for the defendants, in open court consenting it is ordered that all payments made to the First National Bank of Montgomery, Alabama, as designated depository of this court in accordance with the terms of temporary order or orders heretofore granted herein and all such payments hereafter made in accordance with either the said tempo-
[fol. 87] rary order or orders or this temporary injunction, or any permanent injunction which may issue herein, shall be regarded and shall stand as payments to or for the account of the Alabama Unemployment Compensation Commission in such wise as to authorize certification by the Alabama Unemployment Compensation Commission of the payment of such sums for credit under Title IX of the Federal Social Security Act, but without prejudice to all parties in the matter, and subject to such further or supplemental orders as may be rendered herein.

Dated at Montgomery, Alabama, this 18th day of November, 1936.

(Signed) Samuel H. Sibley, Robert T. Ervin. C. B. Kennamer.

[File endorsement omitted.]

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[fol. 88] In United States District Court

[Title omitted]

Stipulation as to Evidence—Filed January 30, 1937

It is hereby stipulated and agreed between counsel for plaintiff and defendants in the above styled cause that a full, true and correct statement of the evidence in said cause, under Equity Rule 75, consists of the following:

1. The affidavits introduced in evidence by plaintiff being the affidavits of Joseph Halfpenny, Allen Little, W. W. Fulgham. George F. Peter, A. R. Forsyth, H. D. Warner, Herbert S. Craigmile, Richard H. Childers, Alex C. Wellman, Herbert S. Salmon and J. M. Jackson, Jr.

2. The affidavits introduced in evidence by the defendants being the affidavits of F. W. Gist, J. L. Kaufman and Peyton D. Bibb.

3. The verified bill of complaint as last amended filed herein and treated as an affidavit in evidence.

4. The verified answer of the defendants filed in this cause (and treated as an affidavit in evidence.)

Albert A. Carmichael, Attorney General, State of [fol. 89] Alabama; Chas. L. Rowe, Assistant Attorney General, State of Alabama; Peyton D. Bibb, Special Assistant of the Attorney General of the State of Alabama; Nicholas E. Stallworth, First National Bank Building, Mobile, Alabama, Attorneys for the Defendants. Lucien D. Gardner, Jr., Birmingham, Alabama; Jos. F. Johnston, Birmingham, Alabama; Forney Johnston, Birmingham, Alabama, Solicitors for Plaintiff. Cabaniss & Johnston, Birmingham, Alabama, of Counsel for Plaintiff.

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ORDER

The foregoing stipulation and the Statement of Evidence as therein stipulated is approved as a true, complete and properly prepared statement of the evidence at the trial of this cause, and may be filed in the clerk's office, and become a part of the record.

This, the 30 day of January, 1937.

Samuel H. Sibley, Circuit Judge. Robert T. Ervin, District Judge. Chas. B. Kennamer, District Judge.

[File endorsement omitted.]

[fol. 90] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF JOSEPH HALFPENNY—Filed November 17, 1936

STATE OF ALABAMA:

Before me, the undersigned authority for said county in said state, personally appeared Joseph Halfpenny who, being duly sworn, deposes and says:

Statement as to Qualifications and Sources and Bases of Statistical Conclusions

I am and have been for the past ten years engaged in the profession of statistician. I have taken complete courses in statistical methods. For approximately seven years I was Assistant Chief of the Bureau of Statistics of a large industrial concern. My business for the last ten years has been mainly connected with statistical researches and conclusions and economic surveys.

[fol. 91] I have made statistical researches and surveys in connection with matters arising under the Alabama Unemployment Compensation Statutes as hereinafter more fully referred to.

Attached to this affidavit and identified as the appropriately lettered exhibits are certain tables which present the statistical status of certain matters therein designated. In each instance the tables have been compiled by me or under my supervision, and, in my opinion as a statistician, they are substantially correct and present a substantially accurate presentation of the situations dealt with. In producing these tables I have used as the bases Census findings as published by the United States Bureau of Census and certain supplemental surveys and studies of the Census Bureau, I have also used statistical publications of the United States Bureau of Labor. In each instance the bases used by me has or have been the official publication or publications of one or the other of the governmental agencies above referred to. In a number of the tables the Census figures for the year 1930, dealing with volume of employ-

ment and similar matters are used. There has, of course, been no complete Census since 1930, and this is the last year for which comprehensive figures dealing with all the matters mentioned are available.

I am, however, in position to express, as an ascertained fact, that the levels and volumes of employment in the State of Alabama as they existed in the year 1930 were practically the same as they exist at the present time, except that there has been a substantial increase in the number of persons [fol. 92] employed in agriculture, the increase as indicated by Government Surveys being approximately 20%. There are kept by me continuous and progressive studies of fluctuations in respect of these matters, and from these studies, with all of which I have continuous familiarity, I have knowledge that the volume of employment existing in Alabama at the present time is approximately the same as for the year 1930; that is to say, the figures of employment and cognate matters for the year 1930 we know, from our statistical studies, to be the figures existing at the present time with the various pluses or minuses being only in minor percentages not sufficient in any way to affect the general trends therein shown. It should, therefore, be understood that wherever 1930 figures are given unless I have indicated to the contrary, substantially the same figures, the same percentages and the same statistical situation exists in the State of Alabama as of the present time.

## Comments and Explanations as to Table "A"

Table hereto attached, designated as "A" shows as of the census year 1930 (known to closely approximate the statistical situation as of the present time) several groupings of employment as affected by, or excluded from, the operation of the Alabama Unemployment Compensation Act. The figure therein shown as grand total, 1,026,320, is the total number of persons gainfully employed, subdivided into those employed in the various occupations which are not exempt from the Act, the latter being shown in Column "A" by occupational groups, the total being 377,575.

[fol. 93] In Column "E" are shown by occupational groups the number of persons employed in the industries or lines of activity exempted from the Act, the total being 648,745.

Column "B" shows the workers in non-exempt industries as reported by industries in the 1930 census.

The margin of difference between the occupation census and reported by industries is approximately what is to be expected from statistical experience in matters of this nature.

Column "C" shows the employees of establishments which are in lines of business not exempted from the operation of the statute, but which establishments employ each less than eight persons, and also includes firm members and proprietors, It should be explained that the figures used in Column "C" are an estimated conclusion derived from the other figures given and from economic experience and test surveys, the variation in the figures used in Column "C" however, would not exceed five percent either way.

Column "D" shows the number of employees excluded neither by exemption nor by minimitude of personnel,—that is to say, the number of employees covered by the Act, and is derived by deducting the figures in Column "C" from the figures in Column "A".

Comments and Explanations as to Table "B"

Table hereto attached, designated as "B" shows the persons gainfully employed in Alabama by major occupational [fol. 94] groupings for the year 1930, the percentages represented by the said figures, and the comparative percentages for the United States as a whole. The occupational figures given in Table "B" are in groupings as shown by the census publications. Wherever the classification is the same as the classification in Table "A" the figures are the same, there being, however, more detailed break-downs in "A" than in "B".

Comments and Explanations as to Table "C"

Table hereto attached and designated as "C" presents a calculation of the revenue which will be produced by the Alabama Act, assuming a level of employment for the years 1936, 1937 and 1938 paralleling the year 1930. As heretofore explained comparative surveys and researches establish that the figures at the present time parallel the 1930 figures. For 1937 and 1938 the volume of wage increment is, of course, a matter of prediction. The figures shown for the years 1937 and 1938 are the revenues which will be pro-

duced under the Alabama Statutes for those years, if the wage increment for said years be the same as for 1930. The statutory rates are used for the periods in which the Act was an- will be effective in the current year, that is to say, as to employer contributions for the entire year and as to employee contributions for the last eight months of the year. The 1937 and 1938 figures shown in the table are for the entire year, (on an increasing scale as to employer contributions). The pay roll increments are derived by applying to total employment as disclosed in the census average earnings as ascertained by the census.

[fol. 95] Comments and Explanations as to Table "D"

Table hereto attached designated "D" shows in the case of wage earners and salaried employees comparatively the earnings at the several recognized rates of pay, the contributions made by employee and employer on account of the amount so earned, and the total maximum benefits which the employee would draw, assuming that he was unemployed for the greatest length of time compensible, and under the conditions most favorable to the drawing of maximum compensation; that is to say, assuming maximum unemployment to set in at the earliest time which qualifies for participation in the benefits provided by the Act.

In the table the hourly rates are set forth in accordance with the recognized gradations of earnings as to the wage class and the recognized major gradations of earnings as to the salaried employees, the highest wage bracket used being one dollar per hour and the highest salary bracket used being twenty-thousand dollars per annum.

[fol. 96] Statement as to Non-Existence of Surveys or Researches in Respect of Present, Past or Anticipated Incidence of Unemployment

I am familiar with all industrial economic surveys and researches which have been made in the State of Alabama within the last ten years or which have been at any time within the last ten years available in Alabama. No such data showing any general unemployment experience, absolute or proportional, have ever existed in Alabama, except that the Census of 1930 showed unemployment figures as of April first and November first of that year. However there being no figures previous or subsequent to show flow

and trend, and therefore, no competent average or competent tendency being determined or determinable, the State of Alabama is without any basis upon which to calculate or estimate unemployment probably to be anticipated even under the prevalence of normal conditions. Therefore, there are no statistical data from which the adequacy either of rates or contributions or rates of benefits could be determined.

I am unable to express an opinion as to whether rates of contribution and rates of benefits provided by the Alabama Act are too high or too low, and from the knowledge I have of the principles of statistical method I am in position to state that no other statistician and no economist could reach such a conclusion, there being an utter lack of base. Both the rates of contributions and the rates of benefits are neces- [fol. 97] sarily determined arbitrarily and without guide of standard.

The figures set forth in the various tables I have appended deal with known employment and known or ascertainable earnings. In this field we have affirmative figures. In the field of unemployment there has been no study, survey or compilation, and in the absence of such production of data, unemployment, existing and anticipated, contributions necessary to create adequate unemployment compensation, and the amounts which would be adequate compensation must necessarily remain neither known nor susceptible of estimation nor susceptible of being fixed except at arbitrarily selected figures.

This statement does not mean to suggest that individual plants could not, by analysis of their records and supplemented by investigation of representative groups leaving the service, arrive at an approximate constructive application of the Act applied to past years; but relatively few, if any, plants in the State can supply that information from records hitherto maintained and no reports for such information have heretofore been called for by public authority, State or Federal. Nor have there been any public hearings or testimony relating to the matter by any public or legislative authority in Alabama.

In short, as to employer and employe in the aggregate subject to the Act, there is involved not only a complete lack of statistics but absolutely incalculable variables as to the benefits which might be claimed under the operation of the Act.

[fol. 98] Actuarial Factors in State Unemployment Compensation Plan Prepared by Social Security Board, Washington, D. C., January, 1936

I am attaching hereto designated as "Exhibit E" a copy of a statement prepared and issued in January, 1936 by the Social Security Board of Washington, D. C. and entitled "Actuarial Factors in State Unemployment Compensation Plan (based upon standards of suggested Unemployment Compensation Bill prepared by Social Security Board, Washington, D. C., January, 1936)

Industrial Activity in Alabama

I am attaching hereto designated as Exhibit F, extract from University of Alabama Business News for February 1st, 1936 and October 1st, 1936. This indicates that business activity in Alabama as shown by composite index, in August 1936 is substantially the same as in 1930.

J. Halfpenny.

Subscribed and sworn to before me this 4th day of October, 1936. Sudie S. Bates, Notary Public.

[fol. 99]

TABLE "A" TO AFFIDAVIT

State of Alabama

Estimated Number of Employees Subject to the Unemployment Compensation Law Based on 1930 Census

| Industries (Not exempt under Act) | A Total Employed Census of Population | B Total Employees Census of Industries | C Estimated and Reported Small Firms & Others Not Subject to Act | D Employees Subject to Act A minus C | D % of Column A |
|---|---|---|---|---|---|
| Manufacturing | 150,858 | 133,551 | 27,225 | 123,633 | 81.95 |
| Trade | 81,279 | 87,850 | 25,440 | 55,839 | 68.70 |
| Mining | 34,959 | 33,781 | 1,400 | 33,559 | 95.99 |
| Personal Service | 26,710 | ..... | 9,733 | 16,977 | 63.56 |
| Building & Constr. | 33,145 | 9,916 | 18,101 | 15,044 | 45.39 |
| Transport & Communication | 18,822 | ..... | 7,581 | 11,241 | 59.72 |
| Professional | 10,097 | ..... | 3,680 | 6,417 | 63.55 |
| Forestry | 5,169 | ..... | 1,884 | 3,285 | 63.55 |
| Miscellaneous | 16,536 | ..... | 7,356 | 9,180 | 55.51 |
| Total | 377,575 | 265,098 | 102,400 | 275,175 | 72.88 |

| Industries (Exempted by Act) | E |
|---|---|
| Agriculture | 492,818 |
| Domestic Service | 73,519 |
| Steam Railroads & Water Transportation | 26,178 |
| Non-Profit Services | 23,318 |
| Professional Service | 7,475 |
| Public Service | 10,782 |
| Postal Service | 3,846 |
| Banking & Insurance | 4,855 |
| Miscellaneous | 5,954 |
| Total | 648,745 |
| Grand Total | 1,026,320 |

Source: 15th Census U. S.
10/14/36

| Summary: | | % |
|---|---|---|
| Persons gainfully employed | 1,026,320 | =100.00 |
| Employees subject to Act | 275,175 | = 26.81 |
| Employees non-exempt Industries | 377,575 | =100.00 |
| Employees subject to Act | 275,175 | = 72.88 |

[fol. 100] TABLE "B" TO AFFIDAVIT

Total Persons Gainfully Employed in Alabama by Occupation

| | 1930 | Percentages Alabama 1930 | U.S. 1930 |
|---|---|---|---|
| All Persons— | | | |
| Agriculture | 492,818 | 48.01 | 21.47 |
| Forestry and Fishing | 6,064 | 0.59 | 0.55 |
| Extraction of Minerals | 34,959 | 3.41 | 2.37 |
| Manufacturing | 185,419 | 18.07 | 29.32 |
| Transportation | 57,745 | 5.63 | 9.09 |
| Trade | 86,134 | 8.39 | 15.43 |
| Public Service | 10,782 | 1.05 | 2.17 |
| Professional Service | 40,890 | 3.98 | 7.02 |
| Domestic & Personal Service | 100,229 | 9.77 | 9.85 |
| Industry Not Specified | 11,280 | 1.10 | 2.73 |
| Total | 1,026,320 | 100.00 | 100.00 |

Source U. S. Census
10/14/36

[fol. 101] TABLE "C" TO AFFIDAVIT

State of Alabama

Calculation of Revenue from Levies of Unemployment Compensation Law on Basis of 1930

| Industry | 0.9% Employer (a) 1.0% Employees(b) 1936 | 1.8% Employer 1.0% Employees 1937 | 2.7% Employers 1.0% Employees 1938 |
|---|---|---|---|
| Manufacturing | 1,770,124 | 3,150,888 | 4,163,673 |
| Trade | 717,591 | 1,277,339 | 1,687,913 |
| Mines and Quarries | 528,828 | 941,334 | 1,243,905 |
| Construction | 217,436 | 387,045 | 511,452 |
| Miscellaneous | 65,983 | 117,452 | 155,205 |
| Total | 3,299,962 | 5,874,058 | 7,762,148 |

(a) Levy for 12 months.
(b) Levy for 8 months.

Source 15th Census U. S.
10/14/36

[fol. 102]

TABLE "D" TO AFFIDAVIT

Status of Employees in Day Rate and Salary Groups Regularly Employed from May 1st, 1936, to December 31st, 1935, and Then Becoming Totally Unemployed on January 1st, 1938, and Qualified to Receive Compensation

Showing Rate of Earnings and Contribution of Employees to Fund, Also Contribution of Employers to Fund, Together with Maximum Benefits

| Occupation | Rate Per Hour | Earnings Week 40 hr. | Employees 1% to Dec. 31, '37 | Company .9% '36 1.8% '37 12/31/37 | Total Employee and Company | 50% Wage Max. $15.00 16 Weeks | Additional Benefit 1.15 Wks. | Total |
|---|---|---|---|---|---|---|---|---|
| Unskilled: | | | | | | | | |
| Com. Labor | .25 | 10.00 | 8.70 | 14.04 | 22.74 | 80.00 | 5.75 | 85.75 |
| Occup. Lab. | .30 | 12.00 | 10.44 | 16.85 | 27.29 | 96.00 | 6.90 | 102.90 |
| Gen. Helpers | .35 | 14.00 | 12.18 | 19.65 | 31.83 | 112.00 | 8.05 | 120.05 |
| Semi-skilled: | | | | | | | | |
| Craft Helpers | .40 | 16.00 | 13.92 | 22.47 | 36.39 | 128.00 | 9.20 | 137.20 |
| Apprentices | .45 | 18.00 | 15.66 | 25.27 | 40.93 | 144.00 | 10.35 | 154.35 |
| Handymen | .50 | 20.00 | 17.40 | 28.08 | 45.48 | 160.00 | 11.50 | 171.50 |
| Skilled: | | | | | | | | |
| Craftsmen | .55 | 22.00 | 19.14 | 30.89 | 50.03 | 176.00 | 12.65 | 188.65 |
| Craftsmen | .60 | 24.00 | 20.88 | 33.69 | 54.57 | 192.00 | 13.80 | 205.80 |
| Craftsmen | .65 | 26.00 | 22.62 | 36.51 | 59.13 | 208.00 | 14.95 | 222.95 |
| Journeymen | .70 | 28.00 | 24.36 | 39.31 | 63.67 | 224.00 | 16.10 | 240.10 |
| Journeymen | .75 | 30.00 | 26.10 | 42.12 | 68.22 | 240.00 | 17.25 | 257.25 |
| Journeymen | .80 | 32.00 | 27.84 | 44.93 | 72.77 | 240.00 | 17.25 | 257.25 |
| Journeymen | .90 | 36.00 | 31.32 | 50.56 | 81.88 | 240.00 | 17.25 | 257.25 |
| Journeymen | 1.00 | 40.00 | 34.80 | 56.16 | 90.96 | 240.00 | 17.25 | 257.25 |
| Salaried: | Amount Per Year | | | | | | | |
| Salary | 1,500.00 | 28.85 | 25.10 | 40.50 | 65.60 | 240.00 | 17.25 | 257.25 |
| Salary | 2,000.00 | 38.46 | 33.46 | 54.00 | 87.45 | 240.00 | 17.25 | 257.25 |
| Salary | 2,500.00 | 48.08 | 44.83 | 67.50 | 109.33 | 240.00 | 17.25 | 257.25 |
| Salary | 3,000.00 | 57.69 | 50.19 | 81.00 | 131.19 | 240.00 | 17.25 | 257.25 |
| Salary | 3,500.00 | 67.31 | 58.56 | 94.50 | 153.06 | 240.00 | 17.25 | 257.25 |
| Salary | 4,000.00 | 76.92 | 66.92 | 108.00 | 174.92 | 240.00 | 17.25 | 257.25 |
| Salary | 5,000.00 | 96.15 | 83.65 | 135.00 | 218.65 | 240.00 | 17.25 | 257.25 |
| Salary | 6,000.00 | 115.38 | 100.38 | 162.00 | 262.38 | 240.00 | 17.25 | 257.25 |
| Salary | 7,500.00 | 144.23 | 135.08 | 202.50 | 327.98 | 240.00 | 17.25 | 257.25 |
| Salary | 10,000.00 | 192.31 | 167.31 | 270.00 | 437.31 | 240.00 | 17.25 | 257.25 |
| Salary | 15,000.00 | 288.46 | 250.96 | 405.00 | 655.96 | 240.00 | 17.25 | 257.25 |
| Salary | 20,000.00 | 384.62 | 334.62 | 540.00 | 873.62 | 240.00 | 17.25 | 257.25 |

10/14/36

[fol. 103] EXHIBIT "E" TO AFFIDAVIT

Actuarial Factors in State Unemployment Compensation Plans (Based Upon Standards of the Suggested Unemployment Compensation Bill), Prepared by Social Security Board, Washington, D. C., January, 1936

[fol. 104] Actuarial Factors in State Unemployment Compensation Plans

## Introduction

This memorandum has been prepared as an aid to the States in estimating the probable number of workers that will be covered by the Federal excise tax upon employers, the probable income that will be contributed, the possible effect of different waiting periods and of different rates of contributions, and the possible maximum duration of benefits that can be paid to the compensable labor force if the standards in the suggested State bill are followed.

With the exception of the State of Wisconsin, no State has had actual experience with unemployment compensation in this country and the Wisconsin act has been in effect too short a time to yield any actuarial experience. In lieu of such experience, it is necessary to estimate the benefits which could be paid in each State in the future under the provisions of the suggested bill. The best method of arriving at such an estimate of possible future benefits would be to assume that an unemployment compensation plan, similar to that proposed in the suggested bill, had been in effect in each State for a period of years, and then to study the hypothetical past experience as a guide to the future. Unfortunately, the dearth of State statistics on the unemployment problem makes such calculations for individual States very difficult in most instances. The only recourse when State statistics are wholly inadequate, is to estimate State behavior in terms of average figures for the United States.

The suggested State unemployment compensation bill provides that two years elapse between the initiation of collections of contributions and the initial payment of the benefits. Employment records will of course have to be instituted for administration purposes when the plan goes into effect and these records will furnish some data which

should be analyzed by each State before benefit payments are started. Such an analysis would probably indicate that corrections should be made in the estimates included herein.

[fol. 105] Coverage

The coverage of the suggested State unemployment compensation bill includes all gainful workers employed in private establishments employing eight or more employees within at least twenty weeks in a calendar year. This, of course, excludes the self-employed-farmers, farm tenants, unpaid farm helpers, independent hand tradesmen, professional people, owners, proprietors, and independent operators. The following employments are also exempted from the Federal tax: (1) agricultural labor; (2) domestic service in a private home; (3) employment on vessels on navigable waters; (4) employment of family members; (5) Federal employment; (6) employment by States or political subdivisions thereof; and (7) employment by religious, charitable scientific, literary, educational, and humane nonprofit organizations. The States will probably wish to follow this coverage fairly closely.[1]

Table I shows a rough approximation of the number of gainful workers who would have been covered in April, 1930, by a plan with the Federal coverage, had one been in operation for some years.

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[1] State and local Government employees were exempted from the Federal tax because the Federal Government cannot tax State or local governments. Employees of State and local Governments might well be covered except those on Governmental relief projects, elected or appointed public officers, government employees on an annual salary basis, and teachers in public schools, colleges, and universities. The State is also free to cover other employments exempted by the Federal tax except Federal employees and employees on vessels on navigable waters. It may also include employers of fewer than eight employees. The California, New Hampshire, New York, Utah, and Washington acts cover employers of four or more persons for thirteen or more weeks. The estimates in this memorandum, however, include only employees covered by the Federal tax.

These figures indicate the total number of workers (the employed plus the unemployed) who would have come within the scope of the plan at that date. If adjusted upward to account for natural growth of the working population, they would represent the maximum number of gainful workers who could be covered by the plan in the various States at any time.

The proportion of gainful workers that would have been covered by the plan varies considerably from State to State and from the National average, as may be seen in Table I. Massachusetts and Rhode Island would have had a maximum of about 56 per cent of their gainful workers covered in contrast to Mississippi which would have had only about 20 per cent of its workers participating in the plan. These variations exist because of differences in the industrial make-up of the States. States having a large agricultural population, for example, would have a smaller proportion covered than would States whose populations are primarily engaged in the manufacturing industries.

[fol. 106]

Table I.—Estimated Coverage of Assumed Unemployment Compensation System, by States, April 1930

| State | Gainful workers | | Compensable labor force | |
|---|---|---|---|---|
| | Total | Non-agricultural | Number (In thousands) | Percent of total gainful workers |
| United States | 48,833 | 38,505 | 22,279 | 45.6 |
| Alabama | 1,026 | 540 | 312 | 30.4 |
| Arizona | 165 | 127 | 73 | 44.2 |
| Arkansas | 668 | 283 | 164 | 24.6 |
| California | 2,501 | 2,189 | 1,267 | 50.7 |
| Colorado | 403 | 297 | 172 | 42.7 |
| Connecticut | 677 | 643 | 372 | 54.9 |
| Delaware | 98 | 81 | 47 | 47.9 |
| District of Columbia | 244 | 243 | 112 | 46.0 |
| Florida | 599 | 469 | 271 | 45.2 |
| Georgia | 1,162 | 660 | 382 | 32.9 |
| Idaho | 162 | 96 | 56 | 34.5 |
| Illinois | 3,185 | 2,843 | 1,645 | 51.7 |
| Indiana | 1,251 | 1,003 | 580 | 46.4 |
| Iowa | 913 | 583 | 337 | 36.9 |
| Kansas | 694 | 466 | 270 | 38.9 |
| Kentucky | 907 | 553 | 320 | 35.3 |
| Louisiana | 816 | 521 | 301 | 36.9 |
| Maine | 309 | 258 | 149 | 48.3 |
| Maryland | 673 | 590 | 341 | 50.7 |
| Massachusetts | 1,814 | 1,762 | 1,019 | 56.2 |
| Michigan | 1,927 | 1,691 | 978 | 50.7 |
| Minnesota | 993 | 691 | 400 | 40.3 |
| Mississippi | 845 | 294 | 170 | 20.1 |
| Missouri | 1,458 | 1,089 | 630 | 43.2 |

Table I.—Estimated Coverage of Assumed Unemployment Compensation System, by States, April 1930—Continued

| State | Gainful workers | | Compensable labor force | |
|---|---|---|---|---|
| | Total | Non-agricultural | Number (In thousands) | Percent of total gainful workers |
| Montana | 216 | 137 | 79 | 36.5 |
| Nebraska | 507 | 310 | 179 | 35.3 |
| Nevada | 43 | 34 | 20 | 46.6 |
| New Hampshire | 193 | 171 | 99 | 51.4 |
| New Jersey | 1,712 | 1,657 | 959 | 56.0 |
| New Mexico | 143 | 85 | 49 | 34.3 |
| New York | 5,523 | 5,279 | 3,084 | 55.8 |
| North Carolina | 1,141 | 642 | 371 | 32.5 |
| North Dakota | 240 | 107 | 62 | 25.8 |
| Ohio | 2,616 | 2,311 | 1,337 | 51.1 |
| Oklahoma | 828 | 525 | 304 | 36.7 |
| Oregon | 410 | 329 | 190 | 46.4 |
| Pennsylvania | 3,722 | 3,479 | 2,013 | 54.1 |
| Rhode Island | 297 | 289 | 167 | 56.2 |
| South Carolina | 688 | 341 | 197 | 28.6 |
| South Dakota | 248 | 117 | 68 | 27.5 |
| Tennessee | 958 | 587 | 340 | 35.5 |
| Texas | 2,207 | 1,374 | 795 | 36.0 |
| Utah | 170 | 129 | 75 | 44.1 |
| Vermont | 141 | 103 | 60 | 42.5 |
| Virginia | 880 | 608 | 352 | 40.0 |
| Washington | 665 | 562 | 325 | 48.9 |
| West Virginia | 570 | 454 | 263 | 46.1 |
| Wisconsin | 1,130 | 841 | 487 | 43.1 |
| Wyoming | 92 | 62 | 36 | 38.9 |
| | | | Inclusion ratio — 57.86% | |

[fol. 107] For a rough approximation of the number of workers in each State who will be covered by the Federal excise tax, see Table II which estimates the size of coverage under a plan assumed to have been initiated in 1933. Employment conditions have since improved somewhat and coverage would consequently be increased slightly. A plan initiated now would, of course, exclude from immediate participation the vast number of unemployed, many of whom will eventually be covered through reemployment in employments that would be covered by the plan, until the maximum estimated in Table I might be reached, or even exceeded. The speed with which this may happen depends largely upon the swiftness with which recovery takes place.

Employment and Unemployment Statistics by States

In constructing estimates for the use of the States all available statistics on unemployment and employment have

been studied. Virtually no data on unemployment by States are available except those in the United States Census of Unemployment of April, 1930, and a few scattered State or city unemployment censuses or surveys.

The compilation of employment statistics prior to 1930 was very limited. No indexes of general employment are known for these years. Several States published employment indicators of factory employees, representative of the manufacturing industries only, but most of these do not go back beyond the 1920's.

[fol. 108] TABLE II.—Estimated Number of Employed Workers Covered by States, 1933

| State | Number of employed workers covered |
|---|---|
| United States | 14,611,000 |
| Alabama | 204,000 |
| Arizona | 46,000 |
| Arkansas | 89,000 |
| California | 900,000 |
| Colorado | 109,000 |
| Connecticut | 254,000 |
| Delaware | 38,000 |
| District of Columbia | 110,000 |
| Florida | 171,000 |
| Georgia | 303,000 |
| Idaho | 38,000 |
| Illinois | 1,048,000 |
| Indiana | 375,000 |
| Iowa | 221,000 |
| Kansas | 190,000 |
| Kentucky | 229,000 |
| Louisiana | 202,000 |
| Maine | 116,000 |
| Maryland | 237,000 |
| Massachusetts | 658,000 |
| Michigan | 531,000 |
| Minnesota | 269,000 |
| Mississippi | 107,000 |
| Missouri | 419,000 |
| Montana | 47,000 |

| State | Number of employed workers covered |
|---|---|
| Nebraska | 120,000 |
| Nevada | 12,000 |
| New Hampshire | 76,000 |
| New Jersey | 591,000 |
| New Mexico | 29,000 |
| New York | 1,892,000 |
| North Carolina | 291,000 |
| North Dakota | 42,000 |
| Ohio | 894,000 |
| Oklahoma | 207,000 |
| Oregon | 148,000 |
| Pennsylvania | 1,215,000 |
| Rhode Island | 106,000 |
| South Carolina | 155,000 |
| South Dakota | 49,000 |
| Tennessee | 244,000 |
| Texas | 531,000 |
| Utah | 48,000 |
| Vermont | 40,000 |
| Virginia | 246,000 |
| Washington | 222,000 |
| West Virginia | 182,000 |
| Wisconsin | 335,000 |
| Wyoming | 23,000 |

[fol. 109] During the last four or five years more complete and reliable employment statistics have been gathered. Not only have States recognized the need for such data, but the United States Bureau of Labor Statistics has been compiling National employment indexes month by month, since 1929, for the following industrial groups: manufacturing, wholesale trade, retail trade, mining, transportation, telephone and telegraph, light and power, and hotels. In 1933 the scope of the field covered was enlarged by the addition of real estate, banking, insurance, and canning and preserving industries. Since 1932 these indexes have been broken down by States, resulting in the first comprehensive monthly State indicators of employment.

Utilizing the Bureau of Labor Statistics indexes and the United States Censuses of Occupations and Unemployment

of April, 1930, estimates have been made of the yearly average employment and unemployment within the compensable labor force by States for each year, 1930 through 1933, the results of which are shown in Table III. The dependability of these estimates is subject to question, at least for part of the period, because the data upon which they were based are inadequate and also because the limited time available for study necessitated the use of unrefined statistical methods. Several checks with other information indicate, however, that these estimates are at least fair approximations of what probably existed. They may therefore be used as a guide in the absence of better data.

More accurate indicators could probably be obtained from the statistical treatment of city surveys of unemployment where such are available, or from an examination of actual employment records within a State.

## Variation in Unemployment Between States

According to Table III the degree of unemployment varies widely from State to State. Table IV in which the States are arrayed according to the estimated percentage of the compensable labor force unemployed in April, 1930, shows a range from approximately 20 per cent in Nevada, to about 8.8 per cent in South Dakota; the 1933 average indicates a high in Michigan over three times as great as the low in Georgia. However, as the period of observation is lengthened the range of variations between States seems to decrease. This conclusion is supported by the 1930-1933 average in which the peak of 35.9 per cent unemployed in Michigan is less than twice as large as the low of 19.1 per cent in Georgia.

(Here follow two photos, side folios 110 and 111)

TABLE III... ESTIMATES OF THE COMPENSABLE LABOR FORCE, 1930-1933, BY STATES

| State | Average number of workers in compensable labor force | | | | Average number employed (In thousands) | | | | Average number unemployed | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1930 | 1931 | 1932 | 1933 | 1930 | 1931 | 1932 | 1933 | 1930 | 1931 | 1932 | 1933 | 1930-33 | 1929 |
| United States | 28,879 | 28,319 | 28,317 | 28,416 | 19,104 | 16,768 | 14,248 | 14,611 | 3,175 | 5,551 | 8,069 | 7,805 | 72.3 | 85.7 |
| Alabama | 312 | 306 | 300 | 295 | 273 | 238 | 194 | 204 | 39 | 68 | 106 | 91 | 74.9 | 87.5 |
| Arizona | 73 | 73 | 73 | 76 | 63 | 54 | 47 | 46 | 10 | 19 | 28 | 30 | 70.7 | 88.3 |
| Arkansas | 186 | 180 | 153 | 149 | 145 | 127 | 96 | 89 | 18 | 33 | 58 | 60 | 73.7 | 88.4 |
| California | 1,387 | 1,279 | 1,288 | 1,303 | 1,080 | 950 | 881 | 900 | 187 | 329 | 407 | 408 | 76.2 | 88.2 |
| Colorado | 172 | 170 | 171 | 172 | 148 | 131 | 112 | 109 | 24 | 39 | 59 | 63 | 73.8 | 86.0 |
| Connecticut | 372 | 375 | 377 | 380 | 319 | 277 | 230 | 254 | 53 | 98 | 147 | 126 | 71.8 | 85.8 |
| Delaware | 67 | 67 | 66 | 67 | 62 | 56 | 53 | 58 | 5 | 11 | 13 | 9 | 79.7 | 89.6 |
| District of Columbia | 118 | 113 | 113 | 114 | 100 | 90 | 81 | 88 | 18 | 23 | 32 | 26 | 79.4 | 89.3 |
| Florida | 271 | 273 | 276 | 277 | 233 | 205 | 170 | 171 | 38 | 68 | 106 | 106 | 71.1 | 85.8 |
| Georgia | 382 | 371 | 366 | 356 | 339 | 296 | 256 | 303 | 43 | 75 | 110 | 53 | 80.9 | 88.7 |
| Idaho | 56 | 54 | 54 | 54 | 49 | 42 | 37 | 38 | 7 | 12 | 17 | 16 | 78.2 | 87.8 |
| Illinois | 1,648 | 1,635 | 1,641 | 1,670 | 1,383 | 1,215 | 1,016 | 1,068 | 268 | 440 | 649 | 633 | 70.3 | 84.1 |
| Indiana | 580 | 581 | 577 | 577 | 496 | 433 | 353 | 375 | 84 | 148 | 224 | 202 | 71.6 | 85.8 |
| Iowa | 337 | 335 | 332 | 329 | 301 | 266 | 228 | 221 | 36 | 69 | 104 | 108 | 76.2 | 89.2 |
| Kansas | 270 | 268 | 267 | 266 | 238 | 210 | 187 | 190 | 32 | 58 | 80 | 76 | 77.0 | 89.1 |
| Kentucky | 320 | 314 | 308 | 308 | 276 | 243 | 215 | 229 | 44 | 71 | 93 | 79 | 77.3 | 88.3 |
| Louisiana | 301 | 301 | 298 | 298 | 261 | 228 | 196 | 202 | 40 | 73 | 102 | 96 | 74.0 | 86.7 |
| Maine | 160 | 160 | 160 | 160 | 138 | 113 | 99 | 116 | 21 | 37 | 50 | 33 | 76.3 | 89.9 |
| Maryland | 341 | 343 | 343 | 344 | 301 | 318 | 236 | 237 | 40 | 26 | 119 | 107 | 78.8 | 88.3 |
| Massachusetts | 1,019 | 1,026 | 1,030 | 1,036 | 864 | 753 | 654 | 658 | 156 | 273 | 376 | 378 | 71.3 | 84.8 |
| Michigan | 978 | 989 | 996 | 1,008 | 783 | 679 | 553 | 591 | 195 | 310 | 443 | 475 | 64.1 | 80.1 |
| Minnesota | 408 | 399 | 397 | 396 | 345 | 303 | 272 | 269 | 36 | 96 | 125 | 127 | 74.7 | 84.3 |
| Mississippi | 170 | 161 | 153 | 147 | 150 | 133 | 108 | 107 | 20 | 29 | 45 | 40 | 78.8 | 88.2 |
| Missouri | 630 | 630 | 627 | 627 | 547 | 481 | 413 | 419 | 83 | 149 | 214 | 208 | 74.0 | 86.8 |
| Montana | 79 | 78 | 77 | 78 | 67 | 58 | 45 | 47 | 12 | 18 | 32 | 29 | 70.5 | 84.8 |
| Nebraska | 179 | 179 | 179 | 178 | 160 | 142 | 125 | 130 | 19 | 37 | 54 | 48 | 76.7 | 88.4 |
| Nevada | 20 | 20 | 20 | 20 | 16 | 14 | 12 | 12 | 4 | 6 | 8 | 8 | 67.5 | 80.0 |
| New Hampshire | 99 | 100 | 100 | 100 | 85 | 73 | 68 | 76 | 14 | 27 | 32 | 24 | 75.7 | 85.9 |
| New Jersey | 958 | 970 | 980 | 990 | 813 | 735 | 602 | 581 | 147 | 265 | 378 | 399 | 69.5 | 84.7 |
| New Mexico | 49 | 48 | 48 | 49 | 43 | 37 | 31 | 29 | 6 | 11 | 18 | 20 | 71.8 | 87.8 |
| New York | 3,084 | 3,111 | 3,134 | 3,150 | 2,635 | 2,313 | 1,950 | 1,915 | 448 | 799 | 1,184 | 1,244 | 70.6 | 83.4 |
| North Carolina | 371 | 369 | 366 | 366 | 320 | 278 | 242 | 281 | 51 | 91 | 124 | 75 | 74.8 | 86.3 |
| North Dakota | 62 | 61 | 59 | 58 | 55 | 49 | 45 | 42 | 7 | 12 | 14 | 17 | 79.3 | 88.7 |
| Ohio | 1,337 | 1,345 | 1,346 | 1,352 | 1,131 | 987 | 836 | 894 | 206 | 358 | 532 | 458 | 71.3 | 84.6 |
| Oklahoma | 306 | 303 | 300 | 299 | 263 | 227 | 195 | 207 | 41 | 76 | 105 | 92 | 74.8 | 88.8 |
| Oregon | 190 | 192 | 192 | 193 | 161 | 142 | 136 | 148 | 29 | 50 | 56 | 45 | 78.8 | 89.7 |
| Pennsylvania | 2,013 | 2,021 | 2,028 | 2,080 | 1,731 | 1,509 | 1,343 | 1,216 | 282 | 512 | 684 | 864 | 70.0 | 86.0 |
| Rhode Island | 167 | 168 | 170 | 171 | 138 | 120 | 100 | 108 | 29 | 49 | 70 | 63 | 68.8 | 83.6 |
| South Carolina | 197 | 193 | 187 | 183 | 176 | 158 | 139 | 155 | 21 | 44 | 58 | 28 | 80.6 | 89.3 |
| South Dakota | 68 | 67 | 66 | 65 | 62 | 55 | 48 | 49 | 6 | 12 | 17 | 16 | 80.8 | 91.2 |
| Tennessee | 340 | 334 | 329 | 334 | 299 | 262 | 225 | 244 | 41 | 72 | 104 | 90 | 77.6 | 87.9 |
| Texas | 795 | 788 | 793 | 796 | 698 | 613 | 521 | 531 | 97 | 186 | 272 | 265 | 74.3 | 87.8 |
| Utah | 75 | 74 | 73 | 73 | 64 | 56 | 49 | 48 | 11 | 18 | 24 | 27 | 72.6 | 85.3 |
| Vermont | 60 | 60 | 58 | 58 | 51 | 45 | 40 | 40 | 9 | 15 | 19 | 19 | 73.8 | 85.0 |
| Virginia | 352 | 347 | 343 | 339 | 312 | 273 | 231 | 246 | 40 | 74 | 112 | 93 | 76.9 | 88.4 |
| Washington | 325 | 327 | 327 | 328 | 279 | 245 | 219 | 222 | 46 | 82 | 108 | 107 | 73.8 | 85.6 |
| West Virginia | 263 | 263 | 263 | 264 | 230 | 202 | 174 | 183 | 33 | 61 | 89 | 82 | 74.8 | 87.1 |
| Wisconsin | 487 | 487 | 486 | 483 | 420 | 366 | 320 | 335 | 67 | 121 | 166 | 147 | 74.3 | 86.1 |
| Wyoming | 36 | 35 | 34 | 34 | 32 | 28 | 23 | 23 | 4 | 7 | 11 | 11 | 74.1 | 88.4 |

E III.— ESTIMATES OF THE COMPENSABLE LABOR FORCE, 1930-1933, BY STATES

| Average number unemployed (In thousands) | | | | Person-number unemployed | | | | Percent of compensable labor force unemployed | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | Maximum | | | | | Minimum | | | | |
| 1930 | 1931 | 1932 | 1933 | 1930 | 1931 | 1932 | 1933 | 1930-33 | 1930 | 1931 | 1932 | 1933 | 1930-33 | 1930 | 1931 | 1932 | 1933 |
| 19,104 | 16,768 | 14,348 | 14,611 | 3,175 | 3,551 | 8,069 | 7,805 | 72.5 | 25.7 | 73.1 | 63.8 | 65.2 | 37.5 | 14.2 | 26.0 | 25.1 | 24.8 |
| 273 | 238 | 194 | 204 | 39 | 48 | 106 | 91 | 74.8 | 27.5 | 77.8 | 66.7 | 69.2 | 35.1 | 13.5 | 22.2 | 25.3 | 26.8 |
| 63 | 54 | 47 | 46 | 10 | 19 | 38 | 30 | 70.7 | 26.1 | 74.8 | 63.7 | 65.5 | 29.3 | 11.7 | 25.0 | 27.3 | 29.3 |
| 145 | 127 | 96 | 89 | 19 | 33 | 58 | 60 | 73.9 | 29.4 | 79.4 | 61.4 | 58.7 | 27.3 | 12.6 | 20.6 | 23.4 | 40.3 |
| 1,080 | 950 | 881 | 900 | 187 | 329 | 607 | 408 | 76.3 | 28.3 | 76.3 | 68.4 | 69.1 | 25.8 | 14.8 | 25.7 | 31.4 | 28.9 |
| 148 | 131 | 113 | 109 | 26 | 39 | 59 | 63 | 73.8 | 25.0 | 77.1 | 65.5 | 68.4 | 27.8 | 14.8 | 22.4 | 34.5 | 28.4 |
| 319 | 277 | 230 | 254 | 55 | 98 | 147 | 128 | 71.8 | 25.8 | 73.8 | 61.0 | 64.8 | 25.3 | 16.3 | 25.1 | 29.6 | 13.3 |
| 43 | 36 | 33 | 38 | 8 | 11 | 13 | 9 | 79.7 | 29.4 | 79.6 | 71.7 | 68.9 | 25.9 | 10.6 | 23.6 | 28.3 | 29.3 |
| 100 | 90 | 81 | 88 | 13 | 23 | 32 | 28 | 79.4 | 29.3 | 79.6 | 71.7 | 77.3 | 25.9 | 10.7 | 23.6 | 23.3 | 25.7 |
| 233 | 205 | 179 | 171 | 36 | 48 | 104 | 108 | 71.1 | 25.8 | 73.1 | 63.8 | 61.7 | 25.8 | 14.8 | 26.8 | 26.8 | 26.3 |
| 339 | 296 | 256 | 303 | 63 | 75 | 110 | 53 | 80.9 | 28.7 | 79.8 | 69.3 | 65.1 | 23.1 | 11.3 | 23.2 | 30.1 | 14.9 |
| 49 | 42 | 37 | 38 | 7 | 12 | 17 | 16 | 78.2 | 27.5 | 77.6 | 69.5 | 70.4 | 25.6 | 13.6 | 25.2 | 31.5 | 25.6 |
| 1,383 | 1,215 | 1,014 | 1,068 | 268 | 440 | 647 | 433 | 70.3 | 25.1 | 73.6 | 61.0 | 65.8 | 29.7 | 13.9 | 25.6 | 29.6 | 27.3 |
| 496 | 433 | 353 | 375 | 86 | 148 | 234 | 208 | 71.6 | 25.8 | 74.3 | 61.3 | 65.8 | 28.6 | 14.5 | 25.3 | 29.9 | 25.8 |
| 301 | 266 | 228 | 221 | 58 | 89 | 104 | 108 | 76.2 | 29.3 | 79.6 | 68.7 | 67.2 | 25.8 | 10.7 | 23.6 | 31.4 | 33.8 |
| 238 | 210 | 187 | 190 | 32 | 52 | 80 | 76 | 77.0 | 29.1 | 78.6 | 70.8 | 71.4 | 25.8 | 11.8 | 23.6 | 30.6 | 28.6 |
| 276 | 243 | 215 | 239 | 44 | 71 | 93 | 79 | 77.3 | 28.3 | 77.6 | 69.8 | 74.4 | 22.7 | 13.7 | 23.6 | 30.2 | 25.6 |
| 361 | 238 | 196 | 202 | 60 | 73 | 102 | 90 | 75.0 | 26.7 | 75.7 | 65.8 | 67.8 | 25.0 | 13.3 | 26.3 | 34.9 | 33.3 |
| 128 | 112 | 99 | 116 | 21 | 37 | 50 | 33 | 76.3 | 25.8 | 75.2 | 66.4 | 77.8 | 23.7 | 14.1 | 26.8 | 33.6 | 22.1 |
| 301 | 318 | 236 | 337 | 68 | 96 | 119 | 107 | 75.8 | 28.3 | 73.6 | 65.3 | 68.2 | 23.3 | 11.7 | 7.8 | 34.3 | 11.1 |
| 886 | 753 | 654 | 658 | 186 | 273 | 378 | 378 | 71.3 | 26.8 | 73.6 | 63.5 | 63.6 | 28.7 | 13.8 | 26.6 | 34.3 | 26.6 |
| 783 | 679 | 553 | 531 | 195 | 310 | 443 | 475 | 64.1 | 20.1 | 68.7 | 56.3 | 58.8 | 23.8 | 19.8 | 31.3 | 44.5 | 47.8 |
| 345 | 303 | 272 | 289 | 58 | 94 | 125 | 127 | 74.7 | 26.3 | 75.2 | 68.3 | 67.2 | 25.3 | 13.7 | 26.3 | 31.1 | 13.1 |
| 150 | 133 | 108 | 107 | 30 | 39 | 45 | 40 | 78.8 | 28.3 | 83.8 | 70.6 | 73.8 | 21.2 | 11.8 | 18.8 | 29.4 | 27.8 |
| 569 | 481 | 413 | 419 | 83 | 149 | 216 | 208 | 74.0 | 26.8 | 76.3 | 65.8 | 64.8 | 26.0 | 13.2 | 23.7 | 34.2 | 23.8 |
| 67 | 58 | 45 | 47 | 13 | 18 | 33 | 29 | 70.5 | 24.8 | 75.3 | 58.4 | 61.8 | 29.5 | 15.3 | 23.7 | 41.4 | 38.2 |
| 160 | 143 | 125 | 130 | 19 | 37 | 54 | 54 | 75.7 | 28.4 | 79.3 | 69.8 | 69.2 | 23.3 | 10.6 | 20.7 | 30.2 | 11.8 |
| 14 | 14 | 12 | 13 | 4 | 6 | 8 | 8 | 67.5 | 25.0 | 70.0 | 60.0 | 60.0 | 32.5 | 15.0 | 30.0 | 40.0 | 40.0 |
| 85 | 75 | 68 | 76 | 14 | 27 | 33 | 34 | 73.7 | 25.9 | 73.0 | 69.6 | 76.6 | 26.3 | 16.1 | 27.8 | 33.3 | 13.8 |
| 813 | 725 | 602 | 581 | 147 | 265 | 378 | 399 | 69.5 | 24.7 | 72.7 | 61.4 | 59.7 | 30.5 | 13.3 | 27.3 | 38.6 | 40.3 |
| 43 | 37 | 31 | 29 | 6 | 11 | 18 | 20 | 71.8 | 27.8 | 77.1 | 63.3 | 58.3 | 28.2 | 13.2 | 22.9 | 36.7 | 40.8 |
| 2,635 | 2,313 | 1,950 | 1,915 | 648 | 999 | 1,184 | 1,344 | 70.4 | 23.4 | 74.3 | 62.1 | 60.6 | 29.6 | 14.6 | 25.7 | 37.9 | 39.4 |
| 320 | 278 | 242 | 281 | 51 | 91 | 126 | 75 | 74.8 | 26.3 | 75.8 | 66.1 | 79.5 | 25.2 | 13.7 | 24.2 | 33.9 | 20.5 |
| 55 | 49 | 45 | 43 | 7 | 13 | 14 | 17 | 79.3 | 28.7 | 80.3 | 76.3 | 71.3 | 20.7 | 11.3 | 19.7 | 23.7 | 28.8 |
| 1,131 | 987 | 884 | 884 | 226 | 358 | 532 | 458 | 71.3 | 24.6 | 73.6 | 61.3 | 64.1 | 28.7 | 13.6 | 26.6 | 38.8 | 23.8 |
| 263 | 227 | 195 | 207 | 61 | 78 | 105 | 92 | 74.8 | 26.3 | 74.9 | 66.9 | 69.2 | 25.2 | 13.8 | 25.8 | 33.9 | 30.8 |
| 161 | 143 | 136 | 148 | 38 | 50 | 58 | 65 | 78.5 | 26.7 | 76.0 | 78.8 | 76.7 | 21.5 | 13.3 | 24.0 | 29.2 | 25.3 |
| 1,721 | 1,509 | 1,342 | 1,318 | 388 | 532 | 786 | 884 | 70.0 | 26.0 | 74.7 | 61.2 | 58.3 | 30.0 | 14.0 | 25.3 | 38.8 | 41.8 |
| 138 | 120 | 100 | 108 | 29 | 49 | 70 | 65 | 68.5 | 23.6 | 71.0 | 58.8 | 63.0 | 31.5 | 17.4 | 29.0 | 41.2 | 36.0 |
| 176 | 152 | 139 | 155 | 31 | 44 | 58 | 38 | 80.6 | 28.3 | 79.3 | 69.0 | 86.7 | 19.4 | 10.7 | 20.8 | 31.0 | 13.3 |
| 63 | 55 | 48 | 49 | 8 | 12 | 17 | 16 | 80.8 | 31.3 | 82.1 | 74.3 | 75.4 | 19.2 | 8.8 | 17.9 | 25.8 | 24.6 |
| 299 | 262 | 225 | 264 | 61 | 92 | 104 | 80 | 77.6 | 27.9 | 78.4 | 68.6 | 73.3 | 22.4 | 12.1 | 21.6 | 31.4 | 26.7 |
| 698 | 613 | 521 | 531 | 97 | 166 | 272 | 465 | 74.2 | 27.8 | 76.7 | 65.7 | 66.9 | 25.8 | 12.3 | 23.3 | 34.3 | 33.1 |
| 64 | 56 | 48 | 48 | 11 | 18 | 26 | 27 | 73.6 | 25.3 | 75.7 | 65.3 | 66.0 | 27.4 | 14.7 | 26.3 | 34.7 | 34.0 |
| 51 | 45 | 40 | 40 | 9 | 15 | 19 | 19 | 71.9 | 25.0 | 75.0 | 67.5 | 67.5 | 28.1 | 15.0 | 25.0 | 32.5 | 32.5 |
| 312 | 273 | 231 | 246 | 60 | 76 | 113 | 93 | 76.9 | 28.6 | 78.7 | 67.3 | 73.6 | 23.1 | 11.4 | 21.3 | 32.7 | 27.4 |
| 279 | 245 | 219 | 222 | 46 | 62 | 100 | 107 | 73.8 | 25.8 | 76.3 | 67.0 | 67.3 | 26.2 | 14.2 | 25.- | 33.0 | 32.8 |
| 230 | 202 | 174 | 183 | 33 | 41 | 89 | 82 | 76.8 | 27.5 | 75.8 | 68.2 | 68.9 | 23.2 | 12.5 | 23.2 | 31.8 | 31.1 |
| 480 | 346 | 330 | 335 | 97 | 121 | 184 | 167 | 74.3 | 26.2 | 73.2 | 64.1 | 69.2 | 25.7 | 13.8 | 26.8 | 33.- | 30.8 |
| 32 | 28 | 23 | 23 | 4 | 7 | 13 | 13 | 78.1 | 28.6 | 80.0 | 69.9 | 63.9 | 26.9 | 11.1 | 20.0 | 34.4 | 36.1 |

# TABLE IV STATES RANKED BY AVERAGE PERCENTAGE OF UNEMPLOYMENT WITHIN THE CIVILIAN LABOR FORCE, APRIL 1930, 1933 AVERAGE, AND 1930-1933 AVERAGE 1/

| April 1930 | | | 1933 Average | | | 1930-1933 | | |
|---|---|---|---|---|---|---|---|---|
| State | Percent of compensable labor force unemployed | Ratio to average of all States (percent) | State | Percent of compensable labor force unemployed | Ratio to average of all States (percent) | State | Perce... compe... labor ... |
| United States | 14.3 | 100.0 | United States | 34.8 | 100.0 | United States | 27. |
| 1. Nevada | 20.0 | 139.8 | 1. Michigan | 47.2 | 135.6 | 1. Michigan | 35. |
| 2. Michigan | 19.9 | 139.2 | 2. Pennsylvania | 41.5 | 119.3 | 2. Nevada | 32. |
| 3. Rhode Island | 17.4 | 121.7 | 3. New Mexico | 40.8 | 117.2 | 3. Rhode Island | 31. |
| 4. Illinois | 15.9 | 111.2 | 4. New Jersey | 40.3 | 115.8 | 4. New Jersey | 30. |
| 5. Ohio | 15.4 | 107.7 | 5. Arkansas | 40.3 | 115.8 | 5. Pennsylvania | 30. |
| 6. Oregon | 15.3 | 107.0 | 6. Nevada | 40.0 | 114.9 | 6. Illinois | 29. |
| 7. New Jersey | 15.3 | 107.0 | 7. New York | 39.5 | 113.5 | 7. Montana | 29. |
| 8. Massachusetts | 15.2 | 106.2 | 8. Arizona | 39.5 | 113.5 | 8. New York | 29. |
| 9. Montana | 15.2 | 106.2 | 9. Florida | 38.3 | 110.1 | 9. Arizona | 29. |
| 10. Vermont | 15.0 | 104.9 | 10. Montana | 38.2 | 109.8 | 10. Florida | 28. |
| 11. California | 14.8 | 103.5 | 11. Rhode Island | 38.0 | 109.2 | 11. Ohio | 28. |
| 12. Utah | 14.7 | 102.8 | 12. Illinois | 37.2 | 106.9 | 12. Massachusetts | 28. |
| 13. New York | 14.6 | 102.1 | 13. Colorado | 36.8 | 105.2 | 13. Indiana | 28. |
| 14. Indiana | 14.5 | 101.4 | 14. Massachusetts | 36.4 | 104.6 | 14. Connecticut | 28. |
| 15. Washington | 14.2 | 99.3 | 15. Wyoming | 36.1 | 103.7 | 15. New Mexico | 28. |
| 16. Connecticut | 14.2 | 99.3 | 16. Utah | 36.0 | 103.4 | 16. Utah | 27. |
| 17. Maine | 14.1 | 98.6 | 17. Indiana | 35.0 | 100.6 | 17. Arkansas | 27. |
| 18. New Hampshire | 14.1 | 98.6 | 18. Ohio | 33.9 | 97.4 | 18. Colorado | 27. |
| 19. Florida | 14.0 | 97.8 | 19. Texas | 33.3 | 95.7 | 19. Washington | 26. |
| 20. Colorado | 14.0 | 97.8 | 20. Missouri | 33.2 | 95.4 | 20. Vermont | 26. |
| 21. Pennsylvania | 14.0 | 97.8 | 21. Connecticut | 33.2 | 95.4 | 21. Oklahoma | 26. |
| 22. Wisconsin | 13.8 | 96.5 | 22. Iowa | 32.8 | 94.3 | 22. Missouri | 26. |
| 23. North Carolina | 13.7 | 95.8 | 23. Washington | 32.5 | 93.4 | 23. Louisiana | 26. |
| 24. Minnesota | 13.7 | 95.8 | 24. Louisiana | 32.2 | 92.5 | 24. Wyoming | 25. |
| 25. Kentucky | 13.7 | 95.8 | 25. Vermont | 32.2 | 92.5 | 25. California | 25. |
| 26. Arizona | 13.7 | 95.8 | 26. Minnesota | 32.1 | 92.2 | 26. Texas | 25. |
| 27. Oklahoma | 13.5 | 94.4 | 27. Nebraska | 31.8 | 91.4 | 27. Wisconsin | 25. |
| 28. Louisiana | 13.3 | 93.0 | 28. West Virginia | 31.1 | 89.4 | 28. Minnesota | 25. |
| 29. Missouri | 13.2 | 92.3 | 29. Maryland | 31.1 | 89.4 | 29. West Virginia | 25. |
| 30. Alabama | 13.1 | 91.6 | 30. California | 30.9 | 88.8 | 30. Alabama | 25. |
| 31. Texas | 12.8 | 89.4 | 31. Alabama | 30.8 | 88.5 | 31. New Hampshire | 24. |
| 32. West Virginia | 12.8 | 89.4 | 32. Oklahoma | 30.8 | 88.5 | 32. Iowa | 23. |
| 33. New Mexico | 12.2 | 85.3 | 33. Wisconsin | 30.5 | 87.6 | 33. Idaho | 23. |
| 34. Texas | 12.2 | 85.3 | 34. Idaho | 30.4 | 85.1 | 34. Maine | 23. |
| 35. Tennessee | 12.1 | 84.6 | 35. North Dakota | 29.8 | 82.8 | 35. Oregon | 23. |
| 36. Kansas | 11.8 | 83.2 | 36. Kansas | 29.6 | 82.2 | 36. Nebraska | 23. |
| 37. Mississippi | 11.8 | 82.5 | 37. Virginia | 27.4 | 78.7 | 37. North Carolina | 23. |
| 38. Maryland | 11.7 | 81.8 | 38. Mississippi | 27.2 | 78.2 | 38. Virginia | 23. |
| 39. Arkansas | 11.6 | 81.1 | 39. Kentucky | 25.6 | 73.5 | 39. Kansas | 23. |
| 40. Virginia | 11.4 | 79.7 | 40. Tennessee | 24.7 | 71.0 | 40. Kentucky | 23. |
| 41. Georgia | 11.3 | 79.0 | 41. South Dakota | 24.6 | 70.7 | 41. Tennessee | 23. |
| 42. North Dakota | 11.3 | 79.0 | 42. Oregon | 23.3 | 67.0 | 42. Mississippi | 23. |
| 43. Wyoming | 11.1 | 77.6 | 43. District of Columbia | 23.1 | 66.4 | 43. Maryland | 23. |
| 44. Iowa | 10.9 | 76.2 | 44. New Hampshire | 23.0 | 66.1 | 44. North Dakota | 23. |
| 45. South Carolina | 10.7 | 74.8 | 45. Maine | 22.1 | 63.5 | 45. District of Columbia | 23. |
| 46. Nebraska | 10.6 | 74.1 | 46. North Carolina | 22.05 | 58.9 | 46. Delaware | 23. |
| 47. Delaware | 10.6 | 74.1 | 47. Delaware | 19.1 | 54.9 | 47. South Carolina | 19. |
| 48. District of Columbia | 10.6 | 74.1 | 48. South Carolina | 15.3 | 44.0 | 48. South Dakota | 19. |
| 49. South Dakota | 8.8 | 61.5 | 49. Georgia | 14.8 | 42.8 | 49. Georgia | 19. |

1/ Estimates derived from population and employment data reported by the United States Bureau of Agricultural Economics, and the United States Bureau of Labor Statistics.

TABLE IV STATES ARRANGED BY AVERAGE PERCENTAGE OF UNEMPLOYMENT WITHIN THE COMPENSABLE LABOR FORCE, APRIL 1930; 1933 AVERAGE; AND 1930-1933 AVERAGE

| Ratio to average of all States (percent) | 1933 Average: State | 1933 Average: Percent of compensable labor force unemployed | 1933 Average: Ratio to average of all States (percent) | 1930-1933 Average: State | 1930-1933 Average: Percent of compensable labor force unemployed | 1930-1933 Average: Ratio to average of all States (percent) |
|---|---|---|---|---|---|---|
| 100.0 | United States | 34.8 | 100.0 | United States | 27.5 | 100.0 |
| [illegible] | 1. Michigan | 47.2 | 135.6 | 1. Michigan | 35.9 | 130.5 |
| [illegible] | 2. Pennsylvania | 41.3 | 119.3 | 2. Nevada | 32.5 | 118.2 |
| [illegible] | 3. New Mexico | 40.8 | 117.2 | 3. Rhode Island | 31.5 | 114.5 |
| [illegible] | 4. New Jersey | 40.3 | 115.8 | 4. New Jersey | 30.5 | 110.9 |
| [illegible] | 5. Arkansas | 40.3 | 115.8 | 5. Pennsylvania | 30.0 | 109.1 |
| [illegible] | 6. Nevada | 40.0 | 114.9 | 6. Illinois | 29.7 | 108.0 |
| [illegible] | 7. New York | 39.5 | 113.5 | 7. Montana | 29.5 | 107.3 |
| [illegible] | 8. Arizona | 39.5 | 113.5 | 8. New York | 29.5 | 107.3 |
| [illegible] | 9. Florida | 38.3 | 110.1 | 9. Arizona | 29.3 | 106.5 |
| [illegible] | 10. Montana | 38.2 | 109.8 | 10. Florida | 28.9 | 105.1 |
| [illegible] | 11. Rhode Island | 38.0 | 109.2 | 11. Ohio | 28.7 | 104.4 |
| [illegible] | 12. Illinois | 37.2 | 106.9 | 12. Massachusetts | 28.7 | 104.4 |
| [illegible] | 13. Colorado | 36.6 | 105.2 | 13. Indiana | 28.4 | 103.3 |
| [illegible] | 14. Massachusetts | 36.4 | 104.6 | 14. Connecticut | 28.2 | 102.5 |
| [illegible] | 15. Wyoming | 36.1 | 103.7 | 15. New Mexico | 28.2 | 102.5 |
| [illegible] | 16. Utah | 36.0 | 103.4 | 16. Utah | 27.6 | 99.6 |
| [illegible] | 17. Indiana | 35.0 | 100.6 | 17. Arkansas | 27.3 | 99.3 |
| [illegible] | 18. Ohio | 33.9 | 97.4 | 18. Colorado | 27.0 | 98.2 |
| [illegible] | 19. Texas | 33.3 | 95.7 | 19. Washington | 26.2 | 95.3 |
| [illegible] | 20. Missouri | 33.2 | 95.4 | 20. Vermont | 26.1 | 94.9 |
| [illegible] | 21. Connecticut | 33.2 | 95.4 | 21. Oklahoma 0 | 26.0 | 94.5 |
| [illegible] | 22. Iowa | 32.8 | 94.3 | 22. Missouri | 26.0 | 94.5 |
| [illegible] | 23. Washington | 32.5 | 93.4 | 23. Louisiana | 26.0 | 94.5 |
| [illegible] | 24. Louisiana | 32.2 | 92.5 | 24. Wyoming | 25.9 | 94.2 |
| [illegible] | 25. Vermont | 32.2 | 92.5 | 25. California | 25.6 | 93.8 |
| [illegible] | 26. Minnesota | 32.1 | 92.2 | 26. Texas | 25.6 | 93.8 |
| [illegible] | 27. Nebraska | 31.8 | 91.4 | 27. Wisconsin | 25.7 | 93.5 |
| [illegible] | 28. West Virginia | 31.1 | 89.4 | 28. Minnesota | 25.3 | 92.0 |
| [illegible] | 29. Maryland | 31.1 | 89.4 | 29. West Virginia | 25.2 | 91.6 |
| [illegible] | 30. California | 30.9 | 88.8 | 30. Alabama | 25.1 | 91.3 |
| [illegible] | 31. Alabama | 30.8 | 88.5 | 31. New Hampshire | 24.3 | 88.4 |
| [illegible] | 32. Oklahoma | 30.8 | 88.5 | 32. Iowa | 23.8 | 86.5 |
| [illegible] | 33. Wisconsin | 30.5 | 87.6 | 33. Idaho | 23.8 | 86.5 |
| [illegible] | 34. Idaho | 29.6 | 85.1 | 34. Maine | 23.7 | 86.2 |
| [illegible] | 35. North Dakota | 28.8 | 82.8 | 35. Oregon | 23.5 | 85.5 |
| [illegible] | 36. Kansas | 28.6 | 82.2 | 36. Nebraska | 23.5 | 85.5 |
| [illegible] | 37. Virginia | 27.4 | 78.7 | 37. North Carolina | 23.2 | 84.4 |
| [illegible] | 38. Mississippi | 27.2 | 78.2 | 38. Virginia | 23.1 | 84.0 |
| [illegible] | 39. Kentucky | 25.6 | 73.6 | 39. Kansas | 22.0 | 80.0 |
| [illegible] | 40. Tennessee | 24.7 | 71.0 | 40. Kentucky | 21.7 | 78.9 |
| [illegible] | 41. South Dakota | 24.6 | 70.7 | 41. Tennessee | 21.4 | 77.8 |
| [illegible] | 42. Oregon | 23.3 | 67.0 | 42. Mississippi | 21.2 | 77.1 |
| [illegible] | 43. District of Columbia | 23.1 | 66.4 | 43. Maryland | 21.2 | 77.1 |
| [illegible] | 44. New Hampshire | 23.0 | 66.1 | 44. North Dakota | 20.7 | 75.3 |
| [illegible] | 45. Maine | 22.1 | 63.5 | 45. District of Columbia | 20.6 | 74.9 |
| [illegible] | 46. North Carolina | 22.05 | 58.9 | 46. Delaware | 20.3 | 73.8 |
| [illegible] | 47. Delaware | 19.1 | 54.9 | 47. South Carolina | 19.4 | 70.5 |
| [illegible] | 48. South Carolina | 15.3 | 44.0 | 48. South Dakota | 19.2 | 69.8 |
| [illegible] | 49. Georgia | 14.9 | 42.8 | 49. Georgia | 19.1 | 69.5 |

[illegible] data reported by the United States Bureau of Agricultural Economics, and the United States Bureau of Labor Statistics.

[fol. 112] From Table IV a comparison may also be made between the percentage unemployed in each State and the percentage unemployed in the United States as a whole. When the ratio of the unemployed in a State to the average of all States is considered, the range in deviations from the National average is from 61.5 per cent to 139 9 per cent for April, 1930; from 42.8 per cent to 135.6 per cent for 1933, but only from 69.5 per cent to 130.5 per cent for the four-year period 1930-1933. It seems probable, therefore, that if the period of observation were extended to ten years or more, the several States might show even less variations and even smaller deviations from the National average.

It should be recognized that the number unemployed is not the only factor conditioning the behavior of an unemployment compensation plan; the length of time that the unemployed have been idle is an important conditioning factor also, and one which will vary somewhat from State to State according to the industrial and economic characteristics of the area. If there is a continuous turnover of labor so that large numbers of the labor force are without work for relatively short periods only, the drain on the unemployment compensation funds will be much greater than if the area includes large stranded populations subject to chronic unemployment. How much allowance should be made for such factors is almost impossible to estimate before State experience has been accumulated, and adjustments may become necessary as data are gathered under the operation of the plan.

[fol. 113] Income from Contributions

The funds for State unemployment compensation systems under the suggested bill are to be raised by a 3-per cent contribution based upon the payrolls of those employed in the covered employments.

Table V shows a rough approximation of the total income that would have been collected in 1933 by such a levy within each State had a plan been in operation for some time. If business conditions continue to improve, the income by 1938, when the full 3-per cent Federal tax becomes operative, will be substantially higher.

State incomes under the plan will vary year by year according to fluctuations in the number of covered persons employed as well as in their wages. Both factors will have

an important bearing on the total amount raised. Tracing the estimated income through the years 1922-1933 for the United States as a whole, a peak in yearly amounts collected appeared in 1929 which was about 80 percent greater than the low reached in 1933. Since low rates of pay tend to go hand-in-hand with high rates of unemployment, the years when incomes raised are smallest will also be the years when the number of unemployed eligible for benefits is greatest. And, unless reserves have been accumulated during less adverse times to meet depression emergencies, drastic measures will have to be taken to maintain a system on a solvent basis.

## Benefits

The scarcity of data on employment and unemployment statistics by States makes it impossible to calculate accurately the amount and duration of benefits which can be allowed within each State. Estimates for the United States as a whole have been utilized and such estimates may be roughly adjusted for individual States according to the variation in their unemployment experience from the average in the United States.

[fol. 114]

Table V.—Estimated Wages and Salaries of Compensable Labor Force and Income from a Three Per Cent Contribution, by States, 1933

| State | Total wages and salaries of gainful workers, 1929 (In millions) | Wages and salaries of total compensable labor force (In millions) | | Three per cent contributions for total compensable labor force, 1933 |
|---|---|---|---|---|
| | | 1929 | 1933 | |
| United States | $59,797 | $33,785 | $17,602 | $528,060,000 |
| Alabama | [1] 589 | [1] 333 | [1] 173 | 5,190,000 |
| Arizona | 209 | 118 | 61 | 1,830,000 |
| Arkansas | 320 | 181 | 94 | 2,820,000 |
| California | 3,738 | 2,112 | 1,100 | 33,000,000 |
| Colorado | 445 | 251 | 131 | 3,930,000 |
| Connecticut | 995 | 562 | 293 | 8,790,000 |
| Delaware | 122 | 69 | 36 | 1,080,000 |
| District of Columbia | 400 | 226 | 118 | 3,540,000 |
| Florida | 528 | 298 | 155 | 4,650,000 |
| Georgia | 654 | 370 | 193 | 5,790,000 |
| Idaho | 147 | 83 | 43 | 1,290,000 |
| Illinois | 5,024 | 2,839 | 1,479 | 44,370,000 |
| Indiana | 1,512 | 854 | 445 | 13,350,000 |
| Iowa | 819 | 463 | 241 | 7,230,000 |
| Kansas | 658 | 372 | 194 | 5,820,000 |
| Kentucky | 689 | 389 | 203 | 6,090,000 |
| Louisiana | 622 | 351 | 183 | 5,490,000 |
| Maine | 326 | 184 | 96 | 2,880,000 |

Table V.—Estimated Wages and Salaries of Compensable Labor Force and Income from a Three Per Cent Contribution, by States, 1933—Continued

| State | Total wages and salaries of gainful workers, 1929 (In millions) | Wages and salaries of total compensable labor force (In millions) | | Three per cent contributions for total compensable labor force, 1933 |
|---|---|---|---|---|
| | | 1929 | 1933 | |
| Maryland | 800 | 452 | 235 | 7,050,000 |
| Massachusetts | 2,709 | 1,531 | 798 | 23,940,000 |
| Michigan | 3,000 | 1,695 | 883 | 26,490,000 |
| Minnesota | 1,032 | 583 | 304 | 9,120,000 |
| Mississippi | 300 | 170 | 89 | 2,670,000 |
| Missouri | 1,614 | 912 | 475 | 14,250,000 |
| Montana | 237 | 134 | 70 | 2,100,000 |
| Nebraska | 449 | 254 | 132 | 3,960,000 |
| Nevada | 61 | 34 | 18 | 540,000 |
| New Hampshire | 217 | 123 | 64 | 1,920,000 |
| New Jersey | 2,752 | 1,555 | 810 | 24,300,000 |
| New Mexico | 120 | 68 | 35 | 1,050,000 |
| New York | 9,906 | 5,596 | 2,915 | 87,450,000 |
| North Carolina | 632 | 357 | 186 | 5,580,000 |
| North Dakota | 153 | 86 | 45 | 1,350,000 |
| Ohio | 3,855 | 2,178 | 1,135 | 34,050,000 |
| Oklahoma | 748 | 423 | 220 | 6,600,000 |
| Oregon | 492 | 278 | 145 | 4,350,000 |
| Pennsylvania | 5,481 | 3,096 | 1,613 | 48,390,000 |
| Rhode Island | 404 | 228 | 119 | 3,570,000 |
| South Carolina | 300 | 170 | 89 | 2,670,000 |
| South Dakota | 161 | 91 | 47 | 1,410,000 |
| Tennessee | 676 | 382 | 199 | 5,970,000 |
| Texas | 1,855 | 1,048 | 546 | 16,380,000 |
| Utah | 203 | 115 | 60 | 1,800,000 |
| Vermont | 145 | 82 | 43 | 1,290,000 |
| Virginia | 733 | 414 | 216 | 6,480,000 |
| Washington | 891 | 503 | 262 | 7,860,000 |
| West Virginia | 657 | 371 | 193 | 5,790,000 |
| Wisconsin | 1,309 | 740 | 386 | 11,580,000 |
| Wyoming | 108 | 61 | 32 | 960,000 |

[1] Leven, Moulton, and Warburton "America's Capacity to Consume"; Brookings Institution, Washington, D. C., 1934; pp. 175, table 19 (Income from Occupation).

[2] Index—0.565—$\frac{\text{Employed Compensable Labor Force for U. S.}}{\text{Total Employed Gainful Workers for U. S.}}$

[3] Index—0.521—$\frac{\text{Total Assessable Payroll, 1933}}{\text{Total Assessable Payroll, 1929}}$

[fol. 115] On the basis of the extent and duration of unemployment in the compensable labor force of the United States as a whole during 1922-1933, it has been estimated that sufficient funds would be collected from a 3 per cent tax upon payrolls to pay benefits equal to 50 per cent of wages for 11 weeks with a three-week waiting period and for 12 weeks with a four-week waiting period.

If over a period of time the rate of unemployment in an individual State tends to approximate the rate for the

Nation as a whole, there is some justification for using the National figure to obtain preliminary estimates of the possible behavior of State unemployment compensation systems over a period of years. However, if the average rate of unemployment for a State during 1930-1933 is estimated as higher than that for the United States during those years, the benefit period provided by the State law should be shorter than the National estimate would permit; on the other hand, if the unemployment rate for a State is lower than for the United States, conservatism suggests that the benefit period be kept equal to those permissable according to National statistics, rather than being increased.

The suggested bill proposes: (1) a rate of weekly benefits of 50 per cent of full-time wages, not to exceed a $15 maximum; (2) compensation of partial unemployment only to the extent that an employee's wages and benefits combined will not exceed two dollars more than the weekly benefit to which he would be entitled if totally unemployed; (3) a ratio of 1 week of benefits to every 4 weeks of employment; (4) certain disqualifications or penalties for unemployment caused by trade disputes, voluntary quitting, or discharge for misconduct; and other minor provisions all of which affect the maximum number of weekly benefits that may be paid in any year to an unemployed worker. Even if the above provisions are not changed, the maximum duration of benefits that may be provided is still contingent on what decision is reached as to (1) the contribution rate imposed, and (2) the length of the waiting period required. Since these are questions on which there may be greater differ- [fol. 116] ences of opinion than on the other provisions of the suggested State bill, the section which follows discusses the effect that different decisions will have in terms of the maximum durations of benefits payable.

## Effect of Variations in Contribution Rates on Duration of Benefits

In order to provide longer durations of benefit than those indicated as possible with a 3 per cent contribution, it may seem desirable to some State legislatures to increase the rate of contribution above the Federal excise tax (either by increasing the employer's rate, by requiring employee contributions, or by providing for a contribution by the State). With a three-week waiting period, the 3 per cent contribution would roughly have permitted the payment of

11 weeks of benefit for the United States as a whole, whereas on the same assumptions, a 4 per cent contribution rate would have increased the duration of benefits to about 17 weeks, and a 5 per cent contribution would have made possible the payment of about 24 weeks of benefits. Thus the increase in the length of benefits is greater in proportion than the increase in the contribution rate. This is explained by the distribution of the unemployed according to the duration of their unemployment taken from surveys or censuses of unemployment, which show that a larger proportion of the idle are unemployed for short periods of time than for long periods. For example, on the basis of records of about 5,000,000 unemployed, 21 per cent were unemployed 4 weeks or less, 13 per cent were unemployed 5 to 8 weeks, while only 5 per cent were unemployed from 17 to 20 weeks. Consequently, as the duration of benefits is increased, each additional week added will require a proportionately smaller addition to the rate of contributions necessary to finance the benefits.

An additional 1 or 2 per cent contribution will therefore make possible an extension of benefits to a duration that will more adequately protect the unemployed against long periods of unemployment. The estimated effect of a higher rate of contributions on the maximum duration of benefits that each State can pay (with variable waiting periods) is shown in Table VI.

[fol. 117] Effect of the Waiting Period on the Duration of Benefits

As previously stated, the cost of compensating the earlier weeks of unemployment is greater than compensating the later weeks. It follows therefore that the length of the waiting period has a considerable effect upon the duration of benefits. According to actuarial estimates for the United States as a whole, a change of one week either way from a three-week waiting period would result in a corresponding change of one to three weeks in the length of benefits permissible.

Effect of Two Solvency Bases on Duration of Benefits

An unemployment compensation system may, of course, be designed to provide benefits only during periods of normal rates of unemployment and minor depressions. The

total contributions received by the unemployment fund may in this event be used to increase the duration of benefits. This will leave the relief of unemployment during major depressions to be met from other funds, or will require Government support of the unemployment compensation fund. For example, the income received by a hypothetical pooled fund for the entire United States is estimated as $6,972,000,000 from 1922 through 1930 and as $8,746,000,000 from 1922 through 1933 at the same rate of contribution, 3 per cent of payrolls. These amounts represent the estimated totals available for benefits during the years in which the funds were collected. Since unemployment was very severe during 1931, 1932, and 1933, the income of the fund would have been greatly reduced at the same time that expenditures for benefits would have been increased. Obviously the fund would not remain solvent unless the duration or amounts of benefits were reduced. The tabulation below shows the maximum possible duration of benefits with identical waiting periods, on two bases of solvency, paying out the entire income of the fund as benefits: A from 1922 through 1930 and B from 1922 through 1933.

[fol. 118]

| Waiting period | Maximum possible duration of benefits from 3-per cent contributions | |
|---|---|---|
| | A[1] (1922-1930) | B[2] (1922-1933) |
| 2 weeks | 17 | 10 |
| 3 weeks | 19 | 11 |
| 4 weeks | 22 | 12 |

[fol. 119]

## Summary

After a decision has been reached as to the contribution rate to be imposed and the length of the waiting period to be required, the maximum duration of benefits that can be provided may be determined. (Of course, decision as to these other factors will also be influenced by the effect each of them has on the duration of benefits.)

---

[1] A assumes that the entire income received from contributions within the period 1922-1930, inclusive, is expended for benefits within the period.

[2] B assumes that the expenditures for benefits during 1922-1930, inclusive, are kept conservative in order to meet the emergency of the depression years 1931-1933, when income falls and expenditures increase.

Table VI has been prepared to indicate the maximum duration of benefits which might be provided on the basis of unemployment experience from 1922-1933 in the United States as a whole, with contribution rates of 3, 4, or 5 per cent, and with waiting periods of 2, 3, or 4 weeks in 52 weeks.

TABLE VI.—Estimated Maximum Number of Weeks of Benefits Payable by States

(Based on Standards of Draft Bill)

| Waiting period | Rate of Contribution | | |
|---|---|---|---|
| | 3 per cent | 4 per cent | 5 per cent |
| 2 weeks | 10 | 15 | 21 |
| 3 weeks | 11 | 17 | 24 |
| 4 weeks [1] | 12 | 18 | 26 |

It must be emphasized that these estimates should not be considered as guaranteeing that the durations of benefits indicated in Table VI can be paid in the actual experience of any one State. They are based on available statistics for the United States, but there is no certainty either that the estimates are entirely reliable, or that the employment and unemployment experience of the past will be repeated in the future. It is urged that those States that have more adequate statistics of their own rates of unemployment should make independent estimates in order to ascertain the duration of benefits possible under their own assumed unemployment compensation plans.

[1] On a cost basis a 2-week waiting period in 13 weeks is approximately equal to a 4-week period in 52.

[fol. 120]

EXHIBIT "F" TO AFFIDAVIT

Statistical Summary of Business Conditions in Alabama
1929-1935

| Year | Coal Production 1,000 net tons | Coke Production 1,000 net tons | Cotton Consumption 100 running bales | Electric Energy Consumed 100,000 kwh | Pig Iron Production 100 gross tons | Indices Corrected for Trend and Seasonal Normal Equals 100 | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | Coal | Coke | Cotton | Electric Energy | Pig Iron | Steel | Composite |
| 1929 | 1,495 | 396 | 529 | 916 | 2,244 | 102.8 | 111.7 | 117.0 | 108.7 | 107.5 | 114.3 | 111.9 |
| 1930 | 1,298 | 332 | 439 | 889 | 1,953 | 89.2 | 92.8 | 94.2 | 100.0 | 92.9 | 83.5 | 90.5 |
| 1931 | 1,000 | 245 | 455 | 894 | 1,394 | 68.7 | 67.9 | 94.7 | 96.3 | 65.8 | 64.8 | 77.0 |
| 1932 | 655 | 117 | 470 | 825 | 550 | 45.0 | 32.0 | 95.1 | 85.6 | 25.8 | 30.3 | 55.5 |
| 1933 | 731 | 139 | 537 | 869 | 742 | 50.3 | 37.8 | 105.5 | 87.4 | 34.5 | 48.4 | 66.1 |
| 1934 | 800 | 176 | 459 | 875 | 951 | 55.0 | 47.4 | 87.8 | 85.9 | 43.9 | 54.3 | 64.1 |
| 1935 | 712 | 167 | 508 | 977 | 1,057 | 48.9 | 44.6 | 94.7 | 94.3 | 48.5 | 58.1 | 67.6 |
| 1936 | | | | | | | | | | | | |
| Aug. | 888 | 255 | 620 | 1,206 | 1,481 | 61.4 | 68.7 | 116.7 | 115.3 | 70.3 | 90.8 | 91.3 |

Extract from University of Alabama Business News, February 1st, 1936 and October 1st,

[fol. 121] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF ALLAN LITTLE—Filed November 17, 1936

STATE OF ALABAMA,
County of Etowah:

Before the undersigned authority in and for the County and State aforesaid, personally appeared Allan Little, who being first duly sworn deposes and says that he is Agent and a Director of the Dwight Manufacturing Company, a corporation, hereinafter referred to as the "Company", and as such agent and director has knowledge of the facts herein deposed to and has the authority of the Company to make this affidavit.

I

The Company is a Massachusetts Corporation and has operated a cotton textile manufacturing mill in the State of Alabama for approximately forty years; that during this period there has been no cessation of operation at this mill of the Company due to conditions of unemployment and the employment at this mill has been practically continuous and in all substantial respects normal; that since the Company began to operate this mill none of the employees thereof, except for a brief period while some of such employees were on a strike, have received any aid, charitable or otherwise, from Federal, State County or Municipal agencies, that deponent is advised of or has been able to learn of; that on the contrary such employees have at all times, except in the case of a few of such employees who were on a strike for a brief period, as hereinabove referred to, been self supporting and able to take care of themselves and their families.

[fol. 122] II

The present operations of the Company are located in Etowah County, Alabama, and are known as the Alabama City Mill of the Dwight Manufacturing Company, the same being the only mill the Company has ever operated in the State of Alabama.

The records of the Company covering these operations show that its employment personnel for the following years has been in the employment of the Company for lengths of time in accordance with the following table:

| | 1930 | 1931 | 1932 | 1933 | 1934 | 1935 | 1936 |
|---|---|---|---|---|---|---|---|
| 1 to 5 years... | 62.8% | 58% | 56% | 58.6% | 48.4% | 53.5% | 60% |
| 6 to 10 years... | 18.7 | 20.6 | 21.5 | 19.8 | 24.8 | 22.9 | 20.5 |
| 10 to 15 years... | 9.8 | 11.5 | 11.9 | 11.3 | 13.8 | 11.8 | 9.4 |
| 15 to 20 years... | 5.3 | 5.9 | 6.3 | 6.2 | 8 | 7.3 | 6.4 |
| 20 to 25 years... | 3.4 | 4 | 4.3 | 4.1 | 5 | 4.5 | 3.7 |

That during the following years the average number of employees employed by the Company in its operation of this mill has been in accordance with the following table:

Average Number of Employees

| Year | Men | Women |
|---|---|---|
| 1930 | 973 | 575 |
| 1931 | 938 | 578 |
| 1932 | 1118 | 428 |
| 1933 | 1260 | 496 |
| 1934 | 1020 | 472 |
| 1935 | 1165 | 647 |

The amounts of the Company's payrolls for this mill during the years indicated is in accordance with the following table:

Pay Rolls

| Year | Amount |
|---|---|
| 1930 | $1,050,784.75 |
| 1931 | 1,028,809.50 |
| 1932 | 883,004.86 |
| 1933 | 1,003,085.12 |
| 1934 | 852,371.15 |
| 1935 | 1,246,521.49 |

That during the following years the yardage of cloth produced by this mill has been in accordance with the following table:

Yardage

| Year | Yards |
|---|---|
| 1930 | 37,605,327 |
| 1931 | 54,263,376 |
| 1932 | 62,557,710 |
| 1933 | 56,447,525 |
| 1934 | 34,853,835 |
| 1935 | 54,863,574 |

[fol. 123] The decrease in the above tables for the year 1934 in the amount of payrolls and the total yardage are due to the fact that for a short period of time during the year 1934 there was a general strike of textile workers in the Southern Textile Mills, including this mill of this Company.

III

The Company during such time has sold and is now selling its products in the State of Alabama and also in various other portions of the United States. All of such sales and shipments to customers are f. o. b. cars to the order of the buyer at Gadsden, Alabama. The Company, in the conduct of its business over the period of its existence, has acquired a substantial and valuable good will with its customers and has for a great many years continuously sold its cloth to some of the same customers.

The Company pays substantial amounts of State and County ad valorem taxes on its property in the State of Alabama, annually, amounting to the approximate sum of $32,957.21; and also pays to the State of Alabama annually substantial amounts of taxes amounting to substantially the sum of $23,000.00.

The Company has in its employ in its operations in the State of Alabama 2,408 employees and has had in its employment during the times herein referred to approximately 1431 to 2453 employees.

The Company prior to and at the time of going into effect of the Federal Social Security Act and of the Alabama Unemployment Compensation Act, had in existence contracts for the sale and future delivery from time to time of cloth manufactured by the Company at this mill with persons, firms or corporations in the State of Alabama and with persons, firms or corporations in other states, many of which contracts have not yet expired or been completely performed, and for the performance of which the Company is bound and obligated. The prices stipulated in such contracts for the delivery of cloth were based upon the price which the Company was obligated under its contract with its employees to pay to employees for their services.

[fol. 124] There has been no cessation of operations in the business of the Company, nor has there been any interruption or cessation of operation in its business or in the actual employment of its employees at this mill during the past fif-

teen years, except that during the year 1934 when said strike of textile workers was in effect for a period of about 12 weeks. Nor has there been during such time any substantial curtailment in the total employee personnel regularly employed and reporting for work, except during the period of time when under the NRA Code promulgated by the Federal Government the Company was required to limit its operations to two shifts a day instead of three shifts a day. This mill of the Company is working now, and since such textile strike over two years ago has been working continuously and the Company has now employed and at work in this mill a personnel of 2,408 men and women.

That the operation of the Company and the employment of its employees has been such for the past eleven years down to and including the present time, that had the Alabama Unemployment Compensation Act and the Federal Social Security Act been the law and in effect no employee of the Company would have been eligible under the terms of said laws to receive any benefits; that there is no indication at the present time, judging the future by the past, or from any facts that now appear to be known or probable, that any of its employees will in the future become eligible for benefits under the provisions of the Acts other than the occasional benefits which might be claimed intermittently by an employee or employees dismissed for cause.

That the business of the Company is not seasonal, such as is likely to result in frequent or customary unemployment of all or any part of its personnel; nor is it subject to shutdown for weather or other natural causes or from minor accidents in the mill or from machinery, nor is there any likelihood of a lack of raw material or lack of market outlet or any other reason which will subject the mill to shutdown. That the business of the Company is entirely [fol. 125] separate both in ownership and operation from the business of any other person or corporation in the State of Alabama or elsewhere. That the Company has no connection or any kind with the employees of any other employers in the State of Alabama; and that any unemployment which might hereafter exist in any or all of such other businesses does not have any effect on the operation of the Company's business. That there is no plant or business in Alabama whose operations have been slowed down or employment curtailed as a result of the Company's

continued operation of its business or as a result of competition from the Company. On the contrary, the Company's continued operation of this mill has continuously and directly contributed to employment in other business in Alabama and in other States.

IV

The Company (assuming the constitutionality of the Alabama Unemployment Compensation Law) and its employees are subject to the exactions by way of "levies, contributions, taxes or pay roll deductions", imposed by said Act. The Company is by the terms of the Act liable for the payment of $9,854.26 for account of the exactions imposed against it directly with respect to employment from Jan. 1, 1926, through August 31, 1936, and for the period of time from May 1, 1936, through Aug. 31, 1936, is liable for the payment of $5,537.82 with respect to the statutory percentage of wages of its employees exacted from its employees, but for the collection and payment of which the Company is made liable, or a total of $15,392.08, the payment of which is sought to be collected by the Respondents in the above styled case. That the Company will be required to pay an estimated amount of $2744.00 per month with respect to wages during September, October, November and December, which amounts will become due on the 15th day of each succeeding month for the preceding month, or an estimated total for the year 1936 of $26,368.08. The amount of tax which the Company will be liable for calculated at the percentages prescribed by the Act for 1937 and 1938 will be approximately $48,706.00 and $64,362.00, respectively, or a total of $139,436.08 for the three year period.

[fol. 126] V

That substantially all of the employees of the Company, or more than eighty per cent, have notified the management that they object to and protest against any deduction being withheld from their wages in accordance with the provisions of the Alabama Unemployment Compensation Act and that they have voluntarily contributed out of their wages to a fund made up by the employees of this Company and the Gulf States Steel Company and other Com-

panies in the Birmingham District for the purpose of contesting in the Courts the validity of the Alabama Unemployment Compensation Act, and that such tests are now pending in the Circuit Court of Etowah County, Alabama, in suits having the name and style of P. O. Adams vs. Dwight Mfg. Co., and Hubert Killian vs. Gulf States Steel Company; that affiant has been informed and believes such information and on such information and belief deposes that in addition to over eighty per cent of the employees of this Company approximately 5,000 employees of other Alabama employers have contributed to the fund for the purpose of bringing and prosecuting the test suits above referred to; that therefore the Company is faced with the possibility of a multiplicity of suits and/or claims and demands in reference to such withdrawals as it makes for the account of its employees in accordance with the terms of the Alabama Unemployment Compensation Law, and that should the law be declared invalid it will be faced with great losses incident to the repayment of such sums in the event it deducts the same from the wages of its employees in accordance with the terms of the Act, the interest thereon, and large incidental costs in reference thereto.

That approximately eighty per cent of the employees of this company belong to an employees association which is now, and has for several years been, operating an insurance benefit fund which will probably be interfered with or displaced by the operation of the Alabama Unemployment Compensation Act and that for this and other rea-
[fol. 127] sons stated in this affidavit the employees of this Company almost as a unit object to the Act and protest against its enforcement.

(Signed) Allan Little

Sworn to and subscribed before me this the 29th day of Oct., 1936. Lillian Mann, Notary Public.

Copy.

[fol. 128] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF W. W. FULGHUM—Filed November 17, 1936

STATE OF ALABAMA,
Jefferson County:

Before the undersigned authority in and for the county and state aforesaid personally appeared W. W. Fulghum who, being first duly sworn, deposes and says that he is Secretary and Treasurer of the Alabama Fuel & Iron Company, a corporation, hereinafter referred to as "The Company", and as such officer has knowledge of the facts herein deposed to and has the authority of The Company to make this affidavit.

I

The Company is an Alabama Corporation and has operated coal mines in the State of Alabama for approximately twenty-five (25) years; that during this period of time there has been no cessation of operation at any of the mines of the company due to conditions of unemployment, but, on the contrary, employment at the mines of the company has been continuous and in all substantial respects normal; that since the operation of the Company began none of its employees have received any aid, charitable or otherwise, from federal, state, county or municipal agencies; that, on the contrary, they have at all times been self-supporting and able to take care of themselves and their families.

II

The present operations of the Company are located in St. Clair County, Alabama, and are known as its Margaret and Acmar Divisions.

[fol. 129] The records of the Company covering these operations show that its employment personnel for the following years has been in the employment of the company for lengths of time in accordance with the following table:

| | 1930 | 1931 | 1932 | 1933 | 1934 | 1935 |
|---|---|---|---|---|---|---|
| 1 to 5 years | 52% | 50% | 50% | 51% | 52% | 60% |
| 5 " 10 " | 23 | 22 | 22 | 19 | 18 | 14 |
| 10 to 15 years | 15 | 16 | 16 | 16 | 15 | 13 |
| 15 " 20 " | 6 | 6 | 6 | 7 | 8 | 7 |
| 20 " 25 " | 4 | 5 | 5 | 7 | 7 | 6 |

That during the following years the average number of employees employed by the company in its operations has been in accordance with the following table:

| | Year | Men |
|---|---|---|
| Average Number of Employees: | 1930 | 1,143 |
| | 1931 | 1,166 |
| | 1932 | 1,106 |
| | 1933 | 1,027 |
| | 1934 | 1,187 |
| | 1935 | 1,516 |

The amounts of the Company's pay rolls during the years indicated is in accordance with the following table:

Pay Rolls

| Year | Amount |
|---|---|
| 1930 | $978,350.00 |
| 1931 | 911,796.00 |
| 1932 | 578,012.00 |
| 1933 | 486,534.00 |
| 1934 | 592,963.00 |
| 1935 | 1,307,898.00 |

That during the following years the tonnage of coal produced by the company has been in accordance with the following table.

Tonnage

| Year | Tons |
|---|---|
| 1930 | 731,162 |
| 1931 | 702,774 |
| 1932 | 516,277 |
| 1933 | 486,534 |
| 1934 | 592,963 |
| 1935 | 840,909 |

The increases in the above tables for the year 1935 in average number of employees, in the amount of pay rolls, and the amount of tonnage are due to the fact that at this time there was a general strike of coal miners in the Alabama District, and extra shifts were put at work by this Company [fol. 130] for the purpose of taking care of an abnormal increase in business due to the shut down on account of the strike of substantially all of the other coal mines in the district.

III

The Company during such time has sold and is now selling its products in the State of Alabama, and also in various other portions of the United States. All of such sales and shipments to customers outside the State of Alabama are f. o. b. cars to the order of buyer, Margaret and Acmar, Alabama. The Company in the conduct of its business over the period of its existence has acquired a substantial and valuable good will with its customers and has for a great many years continuously sold its coal to some of the same customers. For instance, it has continuously sold coal to the Central of Georgia Railway Company for about 25 years, to the Ocean Steamship Company at Savannah, Georgia, for about 25 years, to Jno. A. Walker & Company, at Columbia, Tenn., for about 20 years, and to D. M. White & Son, at Goodwater, Ala., for about 18 years.

The Company pays substantial amounts of State and County ad valorem taxes on its property in the State of Alabama annually, amounting to the approximate sum of $17,200.00; and also pays to the State of Alabama annually substantial amounts of taxes, amounting to substantially the sum of $27,365.00.

The Company has in its employ in its operations in the State of Alabama fifteen hundred employees, and has had in its employment during the times herein referred to approximately one thousand to fifteen hundred employees.

The company prior to and at the time of the going into effect of the Federal Act and of the Alabama Act above referred to, had in existence contracts for the sale and future delivery from time to time of coal mined by plaintiff for delivery with persons in the State of Alabama, and in other States, many of which contracts have not yet expired or been completely performed, and for the performance of which the company is bound and obligated. The [fol. 131] prices stipulated in such contracts for delivery of coal were based upon the price which the company was obligated under its contract with its employees to pay its employees for their services.

There has been no cessation of operations in the business of the company; nor has there been any interruption or cessation of operation in its business or in the active employment of its employees for a longer period than a few days at a time, and never for a period as long as a single

week during said entire time. Nor has there been during such time any curtailment in the total employee personnel regularly employed and reporting for work. The minues of the company are working now and during the times herein above referred to have been working continuously. The company has now employed and at work in its operations a personnel of fifteen hundred men.

That the operation of the company and the employment of its employees has been such from the time of the beginning of its operations, down to and including the present time; that had the Alabama Unemployment Compensation Act and the Federal Social Security Act been the law and in effect, no employee of the company would have been eligible under the terms of said laws to receive any benefits; that there is no indication at the present time, judging the future by the past, or from any facts that now appear to be known or probable, that any of its employees will in the future become eligible for benefits under the provisions of the Acts other than an occasional benefit which might be claimed intermittently by an employee or employees dismissed for cause.

That the business of the company is not seasonal, such as is likely to result in frequent or customary unemployment of all or any part of its personnel; nor is it subject to shutdown for weather or other natural causes, or from accidents in the plant or from machinery, or lack of raw material, or lack of market outlet, or other reasons. That the business of the company is entirely separate both in ownership and operation from the business of any other [fol. 132] person or corporation in the State of Alabama or elsewhere. That the Company has no connection of any kind with the employees of any other employers in the State of Alabama, and that an unemployment which might hereafter exist in any or all of such other businesses does not have any effect on the operation of the company's business. That there is no plant or business in Alabama whose operations have been slowed down or employment curtailed as a result of competition from plaintiff. On the contrary, plaintiff's continued operation of its business has continuously and directly contributed to employment in other business in Alabama, and in other states.

In deposing that the business of the company is not seasonal and that its employment has been uninterrupted, af-

fiant does not intend to testify that it has operated its mines each and every working day. There have been work days during the slack season when the mines have not been in operation. However, such idle work days have not in any way produced any unemployment among its employees because of a system which has been in operation by the company for a good many years which provides for each employees farming a certain required amount of acreage, raising a certain required number of hogs, and producing a certain required amount of garden food and canning a certain required amount of fruits and vegetables. In charge of this work the company has an agricultural expert who supervises it. The company furnishes to each employee acreage, mules, seed and other necessary equipment. As a result of this method of business not only have the employees of the company lived in comfort, but they have had many luxuries. They have not only never received a cent of assistance or relief, but have been able, out of their earnings, to furnish assistance and relief to others less fortunate.

[fol. 133] Actual figures taken from our records, which are correctly kept, show that our employees produced the following products for the years 1932, 1933 and 1934:

| | 1932 | 1933 | 1934 |
|---|---|---|---|
| Corn | 16,361 bu. | 34,990 bu. | 28,148 bu. |
| Potatoes | 18,435 | 18,995 | 18,539 |
| Peas | 2,216 | 2,252 | 1,870 |
| Canning | 100,218 qt. | 119,890 qt. | 100,580 qt. |
| Hogs | 894 | 1,765 | 1,422 |
| Weight (dressed) | 165,032 lbs. | 355,110 lbs. | 302,278 lbs. |
| Sorghum | None | 2,583 gal. | 496 gal. |

## IV.

The Company (assuming the constitutionality of the Alabama Unemployment Compensation Law) and its employees are subject to the exactions by way of "levies", contributions, taxes or pay roll deductions" imposed by said Act. The Company is by the terms of the Act liable for the payment of $8,406.67 for account of the exactions imposed against it directly with respect to employment from January 1, 1936, through August 31, 1936, and for the period of time from May 1, 1936, through August 31, 1936, is liable for the payment of $4,230.62 with respect to the statutory percentage of wages of its employees exacted from its employees but for the collection and payment of

which the company is made liable, or a total of $12,637.29, the payment of which is sought to be collected by the respondents in this case. That the company will be required to pay an estimated amount of $2,500.00 per month with respect to wages during September, October, November and December, which amounts will become due on the 15th day of each succeeding month for the preceding month, or an estimated total for the year 1936, of $22,637.29. The amount of the tax which the company — liable for at the percentages prescribed by the Act for 1937 and 1938 will be approximately $42,000.00 and $56,000.00, respectively, or a total of $120,637.29 for the three year period.

V

That substantially all of the employees of the company, or more than ninety per cent, have notified the management [fol. 134] that they object to and protest against any deductions being withheld from their wages in accordance with the provisions of the Alabama Unemployment Compensation Act and have voluntarily contributed out of their wages to a fund made up by employees of the Gulf States Steel Company, of the Dwight Manufacturing Company and of other companies in the Birmingham District for the purpose of contesting in the courts the validity of the Alabama Unemployment Compensation Act, and that such tests are now pending in the Circuit Court of Etowah County, Alabama, in suits having the name and style of P. O. Adams vs. Dwight Manufacturing Company and Hubert Killian v. Gulf States Steel Company; that affiant has been informed, believes such information, and on such information and belief deposes that in addition to the ninety per cent. of the employees of this company, approximately five thousand employees of other Alabama employers have contributed to the fund for the purpose *for the purpose* of bringing and prosecuting the test suits above referred to; that, therefore, the company is faced with the possibility of a multiplicity of suits and/or claims and demands in reference to such withdrawals as it makes for the account of its employees in accordance with the terms of the Alabama Unemployment Compensation Law, and that should the law be declared invalid it will be faced with great losses incident to the repayment of such sums in the event it deducts the same from the wages of

its employees in accordance with the terms of the Act, the interest thereon, and large incidental costs in reference thereto.

This 28th day of October, 1936

(Signed) W. W. Fulghum.

Subscribed and sworn to before me, this 28th day of October, 1936. (Signed) Eddie J. Sandlin, Notary Public. (Seal.)

Copy.

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[fol. 135] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF GEORGE F. PETER

STATE OF ALABAMA,
Shelby County:

Before the undersigned authority in and for said State in said County, personally appeared George F. Peter who, being first duly sworn, deposes and says that he is the President of Southern Coal & Coke Company, plaintiff in the above styled cause, and hereinafter referred to as the company, and as such officer has knowledge of the facts hereinafter deposed to, and is authorized by said company to make this affidavit; that affiant deposes and says as follows:

I

The plaintiff, Southern Coal & Coke Company, hereinafter called the company, is a corporation duly organized and existing under the laws of the State of Delaware, and is duly qualified, in accordance with the laws of the State of Alabama, to do business in Alabama, and has been qualified so to do and has continuously transacted business in said [fol. 136] State since the year 1918. The company's immediate predecessor in title was engaged in said business in the State of Alabama for more than nineteen years immediately preceding the company and operated under the corporate name of Southern Coal & Coke Company, and was an Alabama corporation.

That company now has and has had continuously since the year 1925 investment in the State of Alabama in excess

of one hundred thousand dollars in lands, leases and plant property and equipment at its place of business at or near Boothton, Shelby County, State of Alabama, for the conduct of its business.

The business carried on and conducted by the company in said State is the mining, sale and distribution of coal, the ownership of coal lands either by direct title or under leases, the sale and disposition of property, the operation of a commissary, the renting and leasing of houses, and other business incidental to the mining and sale of coal; all of its employees live and perform their duties in the State of Alabama.

The company's principal office and place of business in the State of Alabama is and has been, during all the time hereinabove referred to, in Shelby County, Alabama, and the company, since 1918, has been and is a citizen of and having its legal residence and domicile in the State of Delaware.

The Company, during such time, has sold and is now selling its products in the State of Alabama, and also in various other portions of the United States. All of such sales and shipments to customers outside of the State of Alabama [fol. 137] are f. o. b. cars to the order of buyer, Boothton, Alabama. The company in the conduct of its business over the period of its existence has acquired a substantial and valuable good will with its customers and has for a great many years continuously sold its coal to some of the same customers.

The company pays substantial amounts of State and County ad valorem taxes on its property in the State of Alabama annually, and also pays to the State of Alabama annually substantial amounts of other taxes, the total so paid amounting to substantially the sum of $7,300.00.

The company has in its employ in its operations in the State of Alabama three hundred employees, and has had in its employ, during the time herein referred to, approximately three hundred employees.

Plaintiff has operated its mines and business during the entire period of its existence. Coal production in Alabama is of a seasonal nature. As an illustration of this, the average days of plaintiff's operations (which is fairly consistent with the operations of other companies in Alabama engaged as is plaintiff in the mining and sale of domestic

and steam coal) for the past six years has been 193 days worked in 1930, 206 in 1931, 116 in 1932, 186 in 1933, 214 in 1934 and 159 in 1935; and that the average days that the operations have been idle have been 83 work days in 1930; 70 in 1931; 160 in 1932; 90 in 1933; 50 in 1934; and 105 in 1935. The fewer days of operation and the larger number of idle days in 1932 and the first part of 1933 were due to the fact [fol. 138] that at this time plaintiff reduced its employment personnel by approximately forty men (this reduction being the direct result of the loss by the company of one of its valuable accounts on account of the fact that this customer changed its fuel requirements from coal to oil) and the decrease of average days operated and increase of average days idle for the year 1935 were due to the fact that a general strike existed in the coal fields of Alabama, including the employees of the plaintiff, for fifty days during this year. Plaintiff avers that notwithstanding the seasonal nature of its business, the average labor turnover of the plaintiff during the same years (with the exception of an increase in 1932 and 1935 due to the loss of the account and the strike above referred to) has been approximately 5 per cent. Plaintiff avers that the small per cent of labor turnover in its business is due to two causes, (a) the fact that a large percentage of plaintiff's employees have been continuously in its employ for a year many years and when there has occurred a cessation of work due to the seasonal nature of the business, or for other causes, instead of discharging such employees, it has been and will continue to be the policy of the plaintiff to divide the work that is available among all employees; (b) because of the fact that some of plaintiff's employees have been recruited from the farm population and during times of inability to work in the mines, secured the additional needed support to prevent them from becoming public charges or supported by relief or other funds due to unemployment, by farming and gardening as an additional means of support for themselves and [fol. 139] their families during times of unemployment. Plaintiff further avers on information which he has received and believes that the same situation exists in the coal industry in the State of Alabama as a whole; that a large number of miners of Alabama have been recruited from the farm population in the general vicinity of the mines, and

make use of these farms as bases during the time of unemployment.

The company, during all of such times and during the present time, has been and is in competition in the sale of its coal not only with coal operators mining coal in the State of Alabama, but with those mining coal in other States, particularly the States of Tennessee and Kentucky; that such competition has been and is so close and keen with its competitors in the other States that a very small differential in the sale price per ton of coal is sufficient to cause the company to lose a large portion of its business to its out of State competitors; that it has suffered, and will continue to suffer, its keenest competition with hydro-electricity, oil and natural gas distributors who are engaged in business in the State of Alabama, and who on account of the fact that in the manufacture and distribution of their products require a much smaller employment personnel, are, by reason of being required under the Alabama Unemployment Compensation Act to pay a substantially less amount of taxes or contributions, enabled to furnish even more and keener competition.

[fol. 140] II

That the operation of the company and the employment of its employees has been from the time of the beginning of its operations, down to and including the present time; that had the Alabama Unemployment Compensation Act and the Federal Social Security Act been the law and in effect, no employee of the company would have been eligible, under the terms of said laws, to receive any benefits except probably some portion of the forty by which its employment personnel was reduced as aforesaid; that there is no indication at the present time, judging the future by the past, or from any facts that now appear to be known or probably, that any of its employees will in the future become eligible for benefits under the provisions of the Acts other than an occasional benefit which might be claimed intermittently by an employee or employees dismissed for cause.

That the business of the company is not seasonal in the sense such as is likely to result in frequent or customary unemployment of all or any part of its personnel; nor is it subject to shut-down from weather or other natural causes, or from accidents in the plant or from machinery, or

lack of raw material, or other reasons. That the business of the company is entirely separate, both in ownership and operation, from the business of any other person or corporation in the State of Alabama, or elsewhere. That the company has no connection of any kind with the employees of any other employers in the State of Alabama, and that any [fol. 141] unemployment which might hereafter exist in any or all of such other businesses does not have any effect on the operation of the company's business. That there is no plant or business in Alabama whose operations have been slowed down or employment curtailed as a result of plaintiff's continued operation of its business or as a result of competition from plaintiff. On the contrary, plaintiff's continued operation of its business has continuously and directly contributed to employment in other businesses in Alabama, and in other States.

III

Plaintiff avers that under the terms of the Alabama Act, from January 1, 1936, through August 31, 1936, plaintiff became liable to the Commission in the sum of $3,519.70, which amount, in accordance with the contribution instructions of the Commission, and in accordance with the order of the Commission, became due and payable to the Commission on or before the 5th day of October, 1936.

Plaintiff further avers that the Commission demanded of the plaintiff prior to the filing of the bill of complaint herein the payment of said amount, and declined to make any further extensions in reference to said payments. That the company has been required and has been ordered by the Commission to pay an estimated amount of $600.00 per month with respect to wages during September, October, November and December, which amounts will become due on the 15th of each succeeding month for the preceding month, or an estimated total for the year 1936 of $5,900.00. The amount of the tax which the company will become [fol. 142] liable for at the percentage prescribed by the Act for 1937 and 1938 will be approximately $11,000.00 and $15,000.00 respectively, or a total of $32,000.00 for the three-— period.

IV

That in addition to the payment of state and county taxes referred to in Paragraph I hereof, the company has paid to

the Federal Government taxes annually in substantial amounts.

That no disagreements or disputes are pending between plaintiff and its employees and that plaintiff has in existence contracts of employment with all its employees, and which provide for the rate of pay to be paid plaintiff's employees so long as they remain in its employ (the term of employment, however, being subject to the will of either party), said contracts as to rates of pay not expiring until ——, 1937.

That so far as affiant knows or has been informed no agency existed in Alabama prior to the adoption of the Alabama Unemployment Compensation Act for the compilation or analysis of unemployment statistics or data other than the State and Federal Relief Agencies which dealt with the matter solely from the standpoint of relief; that no bureau or administrative agency of the State had any staff equipped for study of the data necessary to estimate the requirements of a compulsory unemployment compensation law or plan; no such studies as to Alabama were or are in existence prior to or since the adoption of the Act; the Legislature had undertaken none either before or during the passage of the Act. That plaintiff, and as far [fol. 143] as affiant knows or has been informed no other employer of labor in the State of Alabama, was called upon, before the adoption of the Act, for its records necessary to the constructive application of the schedules or to determine the rate or levy or probably benefits for any test period, and no information of any kind was sought by any one from the plaintiff as to its prior record of unemployment among its employees or as to the need of plaintiff's employees on account of unemployment in the past, or as to any estimate which might be made as to the need in the future.

That plaintiff is subject to and obeys all laws of Alabama regulating or touching the relation of employer and employee, such as the Workmen's Compensation Act, the laws relating to the employment of minors, the laws relating to the operation of coal mines, and that it has not, in any public investigation, been found or reported to be likely to contribute to unemployment in Alabama.

That if plaintiff is required to keep its books, to make and file reports with the Commission, to collect contributions from its employees and remit these contributions to the Commission, and to do the other things pursuant to the

terms of the Act and the orders of the Commission, the performance of such acts will not only be extremely inconvenient to the plaintiff but the cost of doing the same will be a very substantial sum. It is impossible to estimate the amount of such additional cost because of the fact that it is impossible to tell with any degree of certainty as to what [fol. 144] will be required of the plaintiff under the terms of the Act. Affiant deposes, however, that the cost, as aforesaid, will be substantial, requiring the employment of additional clerical help and the expenditure of other sums necessary in carrying out the orders of the Commission.

George F. Peter.

Subscribed and sworn to before me this 7th day of November, 1936. W. H. Lyman, Notary Public. (Seal.)

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[fol. 145] In United States District Court

[Title omitted]

Affidavit of A. R. Forsyth.

State of Alabama,
Jefferson County:

Before the undersigned authority in and for the County and State aforesaid personally appeared A. R. Forsyth, who being first duly sworn, deposes and says that he is Vice President and Treasurer of the Gulf States Steel Company, a corporation, hereinafter referred to as "The Company", and as such officer has knowledge of the facts herein deposed to and has the authority of The Company to make this affidavit.

I

The Company is a Delaware Corporation and has been engaged in the manufacture of steel products in the State of Alabama for approximately twenty-three (23) years; that during this period of time there has been no cessation of operation of the manufacturing plants of the company due to conditions of unemployment with the exception of one brief period about the year 1921, but, on the contrary, employment at the manufacturing plants of the company has been continuous and in all substantial respects normal.

II

The Company during such time has sold and is now selling its products in the State of Alabama, and also in various other portions of the United States. The company in the conduct of its business over the period of its existence has acquired a substantial and valuable good will with its customers and has for a great many years continuously sold its products to some of the same customers.

[fol. 146] The Company pays substantial amounts of State and County ad valorem taxes on its property in the State of Alabama annually, amounting on the average to the approximate sum of $115,000.00, and also pays to the State of Alabama annually substantial amounts of other taxes, amounting to substantially the sum of $35,000.00.

The Company has in its employ in its operations in the State of Alabama, 3,019 employees.

The Company prior to and at the time of the going into effect of the Federal Act and of the Alabama Act above referred to, had in existence contracts for the sale and future delivery from time to time of products manufactured by the company for delivery with persons in the State of Alabama, and in other States, many of which contracts had not expired or been completely performed, and for the performance of which the company was bound and obligated. Some of these contracts are even yet unexpired and to the performance of which the company is bound and obligated. The prices stipulated in such contracts for delivery of its products were based upon the price which the company was obligated under its contract with its employees to pay its employees for their services.

That the business of the company is not such as is likely to result in frequent or customary unemployment of all or any part of its personnel; nor is it subject to shutdown for weather, or from accidents in the plant or from machinery, or lack of raw material, or lack of market outlet, or other reasons. That the business of the company is entirely separate both in ownership and operation from the business of any other person or corporation in the State of Alabama or elsewhere. That the company has no connection of any kind with the employees of any other employers in the State of Alabama, and that any unemployment which might hereafter exist in any or all of such other businesses does not have any effect on the operation of the company's business.

That there is no plant or business in Alabama whose operations have been slowed down or employment curtailed as a result of the company's continued operation of its business or as a result of competition from the company. On the contrary, the company's continued operation of its business [fol. 147] has continuously and directly contributed to employment in other business in Alabama, and in other States.

III

The Company (assuming the constitutionality of the Alabama Unemployment Compensation Law) and its employees are subject to the exactions by way of "levies", contributions, taxes or pay roll "deductions" imposed by said Act. The company is by the terms of the Act liable for the payment of $17,991.36 for account of the exactions imposed against it directly with respect to employment from January 1, 1936, through August 31, 1936, and for the period of time from May 1, 1936, through August 31, 1936, is liable for the payment of $10,344.33 with respect to the statutory percentage of wages of its employees exacted from its employees but for the collection and payment of which the company is made liable, or a total of $28,335.69, the payment of which is sought to be collected by the respondents in this case. That the company will be required to pay an estimated amount of $5,024.45 per month with respect to wages during September, October, November and December, which amounts will become due on the 15th day of each succeeding month for the preceding month, or an estimated total for the year 1936 of $48,533.49. The amount of the tax which the company will be liable for at the percentages prescribed by the Act for 1937 and 1938 will be approximately $76,043.29 and $124,576.78, respectively, or a total of $249,153.56 for the three-year period.

IV

That substantially all of the employees of the company, or more than ninety per cent., have notified the management that they object to and protest against any deductions being withheld from their wages in accordance with the provisions of the Alabama Unemployment Compensation Act and have voluntarily contributed out of their wages to a fund

made up by the employees of this company, of the Dwight Manufacturing Company and of other companies in the Birmingham District for the purpose of contesting in the courts the validity of the Alabama Unemployment Compensation Act, and that such tests are now pending in the Circuit Court of Etowah County, Alabama, in suits having the name and style of P. O. Adams v. Dwight Manufacturing [fol. 148] Company and Hubert Killian v. Gulf States Steel Company; that affiant has been informed, believes such information, and on such information and belief deposes that in addition to the ninety per cent, of the employees of this company, a large number of other Alabama employers have contributed to the fund for the purpose of bringing and prosecuting the test suits above referred to; that, therefore, the company is faced with the possibility of a multiplicity of suits and/or claims and demands in reference to such withdrawals as it makes for the account of its employees in accordance with the terms of the Alabama Unemployment Compensation Law, and that should the law be declared invalid it will be faced with great losses incident to the repayment of such sums in the event it deducts the same from the wages of its employees in accordance with the terms of the Act, the interest thereon, and large incidental costs in reference thereto.

This 30th day of October, 1936.

A. R. Forsyth.

Subscribed and sworn to before me, this the 30th day of October, 1936.

E. S. Armistead, Notary Public. (Seal.)

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[fol. 149] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF H. D. WARNER

Gulf States Paper Corporation

My name is H. D. Warner. I am Secretary and Treasurer of Gulf States Paper Corporation. The principal place of business of the corporation is in Tuscaloosa County, Alabama. This plant began the work of construction or operation in 1928, and since the completion of the plant has operated continuously, with the exception of a shut-down of

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1
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several months in the latter part of 1935 due to a strike, and with temporary shut-downs of less than two weeks duration necessitated by repairs, high water, etc., in 1934 (June 17th to July 1st, and September 1st to September 20th). At other intervals operations have ceased for as much as a week, but not as long as two weeks.

As of August 31, 1929, we had 493 employees on plant roll, 28 employees on plant salary roll, and an estimated 20 on central office roll, or a total of 541 employees.

As of October 15, 1936, we had 744 employees on plant roll, 54 employees on plant salary roll, and 18 employees on central office roll, or a total of 816 employees, an increase of 275 employees over August 31, 1929.

This progressive increase in employment throughout the period of the depression and embracing the entire period of [fol. 150] the depression, is set out on the Exhibits hereto attached marked Exhibits A and B respectively.

Exhibit A is a table showing the number of salaried employees by months beginning January, 1930, and ending with September, 1936. This may be subject to correction to the extent of one or two employees, through the determination of averages for the month. This includes plant employees only.

From this table (Exhibit A) it will be seen that the salaried employees have increased steadily and progressively without a set-back of more than one or two from the previous high; from 50 during January, 1930, to 73 during September, 1936. The exits from this group for any and all causes have not been checked in detail, but the number is so small that they may be properly said to be negligible. The amounts paid employees on a salary basis are also set forth on Exhibit A.

A large majority of the employees of Gulf States Paper Corporation during 1936 were in the employment of the Company before September 14, 1935, in the regular employ of the company, under a continuing relationship and were not re-hired after that date. I do not mean that there were fixed contracts for definite terms but that the relationship of employer and employee had become established prior to the date stated.

Had the Alabama Unemployment Compensation Law been in effect beginning January 1, 1930, the amount of levies

under the Law against the Company and its salaried employees would have been as follows:

[fol. 151] Levy on Company at progressive rate increase Fixed by Act, Assuming a Beginning in 1930, Plus (a) 1% on Salaried Employees and (b) 1% on All Employees

| Year | Rate | (a) Company and Salaried Employees | (b) Company and All Employees* |
|---|---|---|---|
| 1930 | 1.90% | $2,179.76 | $11,388.60 |
| 1931 | 2.80% | 3,641.03 | 17,696.17 |
| 1932 | 3.70% | 4,481.04 | 20,607.74 |
| 1933 | 3.70% | 4,152.33 | 20,982.63 |
| 1934 | 3.70% | 4,988.81 | 24,650.53 |
| 1935 | 4.00% | 5,826.51 | 25,585.46 |
| 1936 | 4.00% | 4,758.94 | 26,668.11 |

Based on the stabilized operations resulting from improvement in general conditions and absorption of the turnover resulting from the sudden increase in personnel resulting from NRA, in my opinion the amount of the levy upon plaintiff and its employees will continue indefinitely on a base pay roll of approximately $800,000 per annum, or, when the assumed average of 4% (3% plus 1% against employees) is reached, an annual levy of more than $30,000. [fol. 152] Exhibit B sets out a graph showing the average number of employees by months from January 1, 1931, through September, 1936. This includes only workers employed on an hourly wage basis, and excludes the salaried employees. The principal recession in the number of hourly workers from any previous high is the period following the extraordinary increase in the number of workers resulting from the adoption of the National Industrial Recovery Act in 1933. An increase of several hundred employees in July and August, 1933, resulted in a turnover beyond the Company's ordinary experience in the adaptation of the new personnel to the work.

There was also an observable reduction in the number of workers for a few months in the middle of 1935. As will be noted from the graph (with the exception of the decline from the peak following the extraordinary enlargement of personnel under NRA), the increase in personnel has been

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* Except central office: approximately $90,000 in 1935.

steady from the beginning of operation of the plant to a satisfactory normal line shown by the graph.

This graph shows the net average for the respective months, and does not show the total number of exits, voluntary withdrawals for personal reasons, and hires of new workers to take their places. It has not been found practicable by the Company within the time available and without material expense to trace all exits in order to ascertain [fol. 153] which would have been eligible for benefits under the Alabama Unemployment Compensation Law had it been effective during the period shown by the graph. Based upon a rough approximation, I am of the opinion that the distribution of benefits under the conditions of eligibility determined by the Act would have been a small fraction of the total levies against the Company and its employees as to the workers employed on an hourly basis, and would, as above stated, have been nominal and negligible as applied to plant workers employed on a salary basis, and would have amounted to nothing for salaried officers in the central office.

The sales of the product of Gulf States Paper Corporation are principally to purchasers in interstate commerce, not more than five (5%) per cent of its sales being to purchasers in Alabama.

There is no present prospect in the operation of the business of Gulf States Paper Corporation of stoppages of operations or of any substantial curtailment of employee personnel.

I have been requested to compile certain data from official reports and other sources indicated below:

(1) I have been requested to obtain affidavits from representstive industries or employers showing as accurate as possible cross-sections of the constructive application of the Act to their respective industries or businesses. I have accordingly obtained showings from those which were ob- [fol. 154] tainable in time for use at the first setting of the cause in which this statement is submitted, and submit them herewith:

Bituminous Coal Industry; all mines, consolidated.

Waterworks and electric utility: Alabama Water Service Co.

Wholesale merchants (hardware): Moore-Handley Hdwe. Co.

Life Insurance Companies: Protective Life Insurance Co.

Rubber Tire Industry: Goodyear Tire & Rubber Co. (Ala.).

They constitute, in my opinion, representative cross-sections of employers in Alabama included within the Act.

(2) I have been requested to compare this Company's experience of full time operations since its beginning with known examples of other plants or businesses.

(a) Highway Contractors.—The field workers in these organizations are employed generally from the floating labor pool in the vicinity of the job. During the past few years, when most highway construction has been with Federal aid, Federal relief agencies have required contractors to take workers assigned from the relief rolls in the several communities where the work is done. After the job is over the common labor is dropped permanently unless by chance another job is obtained. Contractors in this group are essentially nomadic and produce a high percentage of discharges.

(b) Building and Railway Contractors.—A somewhat similar condition obtains on all construction work. According to the affidavit of Mr. Joseph Halfpenny (Table A), approximately 10% of the labor in industries not exempt under the Alabama Act is employed in building and construction, compared with 39% in all manufacturing and not more than 2% or 3% in the manufacture of paper.

[fol. 155] (c) Manufacturing.—A wide variation in stoppages or exits prevails within the manufacturing group, from a plant of continuous operation, such as Gulf States Paper Corporation, to machines and foundry shops, furnaces, and like establishments in which there exists a heavy excess of competitive plant capacity over market and where labor is a large factor in the manufacturing process, employment varying almost directly with orders gained in a competitive market and wholly seasonal operations such as canneries, cotton seed oil mills and like operations which can obtain their raw material only seasonally and must work it up immediately and are closed down for the remainder of the year.

(d) Professional.—At the extreme end is the professional group, as to which quits or stoppages resulting in eligible unemployment are rare. Thus in the office of counsel for plaintiff in this proceeding we are authorized to state that there have been only two exits within the last six years, both being discharges for cause, to which eligible unemployment might (if the statutory conditions were fulfilled) have attached, all other exits having been under clearly non-eligible conditions.

(3) I have been requested to state briefly facts within my knowledge or available from specialists in the matter of the existence of actuarial data sufficient to determine the amount of tax or levy necessary to provide unemployment insurance on the basis predicated by the Alabama Act.

From a monograph upon the "Actuarial Factors in State Unemployment Compensation Plans" issued by the Federal Social Security Board, January, 1936, accompanying a suggested form for State Acts, the following excerpts are quoted. The portions not indented are statements of affiant. The portions quoted and indented are from the monograph where not otherwise indicated.

[fol. 156] Based on my study of the matter I am able to state that no adequate actuarial or experience data is available; that one of the essential purposes of a two year waiting period is to require reports and study those reports, with a view to possible exclusions, inclusions or statutory changes in the levies or in the conditions to or amounts of benefits, before the benefits become distributable under the Act.

"With the exception of the State of Wisconsin, no State has had actual experience with unemployment compensation in this country and the Wisconsin act has been in effect too short a time to yield any actuarial experience. In lieu of such experience, it is necessary to *estimate* the benefits which could be paid in each State in the future under the provisions of the suggested bill. The best method of arriving at such an estimate of possible future benefits would be to assume that an unemployment compensation plan, similar to that proposed in the suggested bill, had been in effect in each State for a period of years, and then to study the hypothetical past experience as a guide to the future. Unfortunately, the dearth of State

statistics on the unemployment problem makes such calculations for individual states very difficult in most instances. The only recourse when State statistics are wholly inadequate, is to estimate State behavior in terms of average figures for the United States.

"The suggested State unemployment compensation bill provides that two years elapse between the initiation of collections of contributions and the initial payment of the benefits. Employment records will of course have to be instituted for adminstration purposes when the plan goes into effect and these records will furnish some data which should be analyzed by each State before benefit payments are started. Such an analysis would probably indicate that corrections should be made in the estimates included herein."

(Federal Social Security Board, p. 1).

The monograph estimates (page 2) that for the United States 45.6% of the total workers gainfully employed would be included in the class of compensable labor forces not ex- [fol. 157] cluded by the Federal Act (without exclusion of carriers' employees subsequently exempted by the Alabama Amendment); for Alabama this percentage of the total gainfully employed in the nonexcluded groups is estimated at 30.4% (that is, 312,000 out of a total of 540,000 non-agricultural gainful workers, out of a total of all gainful workers of 1,026,000. This estimated percentage of gainful workers subject to the Act is below the national average due to the fact that a majority of the workers in Alabama gainfully employed are agricultural. This figure is not the Board's estimate of the number of workers actually to be covered but the total estimated compensable workers.

"A plan initiated now would, of course, exclude from immediate participation the vast number of unemployed, many of whom will eventually be covered through reemployment in employments that would be covered by the plan."

(Federal Social Security Board, p. 4).

The monograph sets out a rough approximation of the number of workers in each State who will be covered by the Federal excise tax, under a plan assumed to have been initiated in 1933. For Alabama it is estimated at 204,000, or

approximately 20% of the estimated total workers gainfully employed in the State in 1930.

"Utilizing the Bureau of Labor Statistics and the United States Censuses of Occupations and Unemployment of April, 1930, estimates have been made of the yearly average employment and unemployment within the compensable labor force by States for each year, 1930 through 1933, the results of which are shown in Table III. The dependability of these estimates is subject to question, at least for part of the period, because the data upon which they were based are inadequate and also because the [fol. 158] limited time available for study necessitated the use of unrefined statistical methods. Several checks with other information indicate, however, that these estimates are at least fair approximations of what probably existed. They may therefore be used as a guide in the absence of better data.

"More accurate indicators could probably be obtained from the statistical treatment of city surveys of unemployment where such are available, or from an examination of actual employment records within a State."

(Federal Social Security Board, p. 6).

"It should be recognized that the number unemployed is not the only factor conditioning the behavior of an unemployment compensation plan; the length of time that the unemployed have been idle is an important conditioning factor also, and one which will vary somewhat from State to State according to the industrial and economic characteristics of the area. If there is a continuous turn-over of labor so that large numbers of the labor force are without work for relatively short periods only, the drain on the unemployment compensation funds will be much greater than if the area includes large stranded populations subject to chronic unemployment. How much allowance should be made for such factors is almost impossible to estimate before State experience has been accumulated, and adjustments may become necessary as data are gathered under the operation of the plan."

(Federal Social Security Board, p. 9).

"State incomes under the plan will vary year by year according to fluctuations in the number of covered persons employed as well as in their wages. Both factors will have

an important bearing on the total amount raised. . . . Since low rates of pay tend to go hand-in-hand with high rates of unemployment, the years when incomes raised are smallest will also be the years when the number of unemployed eligible for benefits is greatest. And, unless reserves have been accumulated during less adverse times to meet depression emergencies, drastic measures will have to be taken to maintain a system on a solvent basis."
(Federal Social Security Board, p. 10).

(4) I have been requested to present certain excerpts from public statements or releases having a possible bearing upon the common understanding as to the relationship between the tax and appropriation provisions of the Federal Social Security Act relating to old age benefits and unemployment insurance:

[fol. 159] (a) Statement by the President in address broadcast from New York October 31, 1936 (text being taken from New York Times for November 1, 1936, page 36), relating to Federal Social Security Act:

"They tell the worker his wage will be reduced by a contribution to some vague form of old-age insurance. They carefully conceal from him the fact that for every dollar of premium he pays for that insurance, the employer pays another dollar. That omission is deceit.

"They carefully conceal from him the fact that under the Federal law he receives another insurance policy to help him if he loses his job and that the premium of that policy is paid 100 per cent by the employer and not one cent by the worker. They do not tell him that the insurance policy that is bought for him is far more favorable to him than any policy that any private insurance company could afford to issue. That omission is deceit.

"They imply to him that he pays all the cost of both forms of insurance. They carefully conceal from him the fact that for every dollar put up by him his employer puts up three dollars—three for one. And that omission is deceit.

"But they are guilty of more than deceit. When they imply that the reserves thus created against both these policies will be stolen by some future Congress—diverted to some wholly foreign purpose, they attack the integrity

end honor of American government itself. Those who suggest that are already aliens to the spirit of American democracy. Let them emigrate and try their lot under some foreign government in which they have more confidence."

(b) Text of page advertisement purporting to be written and paid for by The Democratic National Committee, Hotel Biltmore, New York City, omitting caption and table:

"You Can't Lose Because—You get more than you put in. No matter when you die, you and your family get all you paid in and more. If you live to 65 years, you get a pension three times bigger than you could get from any insurance company at the same rate.

[fol. 160] "The Social Security Act is the greatest insurance bargain ever offered.

"The Act provides aid to the blind, dependent mothers and crippled children. No tax is imposed on your pay envelope to pay for this aid.

"The Act provides insurance against unemployment. No Federal tax is imposed on your pay envelope for these pensions.

"It gives every worker in this country what private insurance companies call a *combination life and annuity policy.*

"The law makes the employer pay half the cost of this policy. The worker pays the other half.

"Thus you get back more than you pay in.

"If you die before 65, the insurance goes to your family.

"If you reach 65, you retire on the kind of an annuity only the well-to-do can afford to buy as private insurance, because the premiums to a private insurance Company for the same protection would be from *three* to *five times as much* as you pay to Uncle Sam.

"All of the above facts also apply in the case of a woman worker. Marriage does not affect a woman's right to the annuity for which she has paid. If she dies before reaching annuity age, the amount to which she is entitled goes to her estate.

"Existing private pensions are not affected in any way by the law.

"Your employer must match dollars with you to make your old age safe from want

This advertisement written and paid for by "The Democratic National Committee, Hotel Biltmore, New York City."

(Chicago Tribune, p. 4, Nov. 2, 1936)

[fol. 161] (c) Excerpt from address by Hon. Robert F. Wagner, U. S. Senator from New York, who introduced and reported the Federal Social Security Bill in the United States Senate, broadcast from New York, Monday night, November 2, 1936:

"The truth is that the Social Security Law is increasing tremendously the compensation that the worker receives for his services, and I shall tell you how. First of all, let us take the old age insurance system, under the Roosevelt Social Security Law it is designed to spare the worker of today from the humiliation of charity in his old age to assure him of dignified and substantial monthly insurance payments when he retires at the age of sixty-five. This insurance system is an absolutely sound system, backed by a fund in the U. S. Treasury. Into this fund the worker pays regular premiums, just as he would pay premiums if he bought an old age insurance policy from a private insurance company, but there is this tremendous difference: For every dollar that the worker pays into this old age insurance fund, his employer is required to add another dollar and both dollars belong to the worker.

"In addition, the whole cost of administering the system is paid for by the Government. As a result, each worker gets a vested and certain right in an old age annuity that is two and one-half times as great as he pays for. It is his absolutely and if he does before reaching the age of sixty-five, it will be paid to his family. The constant flow of money into the worker's insurance account to protect him when he grows old is his first pay increase under the Social Security Law.

"Secondly, the law provides for unemployment insurance that does not cost the worker a single penny. It is paid for entirely by the employer and the money that the employer pays into a fund to care for the worker

when he loses his job, that is the worker's second pay increase under the Social Security Law.

"Now to sum up, in order that I may be perfectly clear under both unemployment insurance and old age insurance, what does the worker contribute to his own fund?

"He pays a premium of one dollar for every one hundred dollars of wages he obtains. What does the em- [fol. 162] ployer contribute? The employer pays two dollars for every dollar the worker contributes. Who gets this money? Both the worker's dollar and the employer's two dollars are paid to the worker in the form of unemployment insurance and old age insurance. Is that all the worker gets? No, he gets the earnings on the old age pension fund.

"That, briefly, is why I say that the Social Security Law means a pay increase to the wage earners of America.

• • • • • • •

"They say that the funds for old age and unemployment insurance are not safe. They insinuate that the insurance fund will be stolen by the United States Government; that is a brazen falsehood. • • •

"This is the first time in American history that any responsible person has tried to besmirch the good faith of the American Government. It is a last desperate maneuver of the Republican opposition that the American people will indignantly repudiate."

[fol. 163] Administrative Interpretation of Power of State to Appropriate for Direct Relief. See Constitution, Sec. 93

No instance has been developed by checking the statutes for the past ten years of any direct appropriation by the State for the relief of destitution or unemployment or for private relief not connected with service of the State or arising out of some mistake, act or negligence involving the State.

A review of administrative acts since the onset of the current depression and cycle of unemployment discloses the following representative expressions or practice.

(5) I have been requested to excerpt the facts ascertainable from the files of the Governor's office set out below,

relating to the attitude of the State of Alabama to direct relief of destitution or hardship resulting from unemployment both during the depression and in general.

(a) In response to the provisions of Section 1 of Title I of the Federal Emergency Relief and Construction Act of 1932 (15 U. S. Code, Sec. 605-a), the Governor and the various relief agencies in the State concerned with destitution and unemployment presented sundry applications to the Reconstruction Finance Corporation. For convenience, condensed reference is made to this measure in the footnote. * These applications were presented through the [fol. 164] Governor. Accompanying the first application, dated August 15, 1932, which related to funds for direct relief and work relief for the City of Birmingham and Jefferson County, the Governor forwarded with the appliion an explanation in the form of the letter accompanied by a copy of the Proclamation of the Governor dated August 4, 1932, calling an extraordinary session of the Legis-

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* Section 1 of the Act related to the relief of destitution, and made available to RFC $300,000,000 "to be used in furnishing relief and work relief to needy and distressed people, and in relieving the hardship resulting from unemployment," to be available for payment to the Governors of the several states upon application by them in accordance with the Act, viz., upon a showing that the funds and resources of the State and its public subdivisions and private contributions were inadequate to meet its relief needs. Section 1 (d) provided as follows:

"d) Nothing in this section shall be construed to authorize the corporation to deny an otherwise acceptable application under this section because of constitutional or other legal inhibitions or because the State or Territory has borrowed to the full extent authorized by law. Whenever an application under this section is approved by the corporation in whole or in part, the amount approved shall be immediately paid to the governor of the State or Territory upon delivery by him to the corporation of a receipt therefor stating that the payment is accepted subject to the terms of this section."

Section (e) authorized the Governor to transfer the Federal aid money to any municipality or political subdivision.

lature to convene August 16, 1932. With reference to the subject of relief of destitution or unemployment the following clauses were inserted in the call:

"11. To provide that any county or municipality in the State may directly contribute of its public funds for the relief of unemployment, or for taking care of the unemployed and the destitute, in any manner that the municipality or county may see fit; to authorize any municipality or county to borrow money from the Reconstruction Finance Corporation, or from any other source, for the purpose of taking care of the destitute or for giving employment to the destitute or unemployed, and to provide for ratifying and making legal any payments that may have been made by counties or municipalities in relief work or in giving jobs or employment to the destitute or unemployed.

* * * * * * *

"17. To provide any legislation that may be necessary to permit the State to secure the full benefit of the emergency relief and construction act of 1932, passed by Con- [fol. 165] gress and approved by the President of the United States July 21, 1932; and to provide such legislation as may be necessary or proper to permit any municipality or any county of the State to secure the full benefit of said Act; and to provide such legislation as may be necessary or proper to authorize corporations to be formed and regulations to be provided for such corporations in order that such corporations may receive the benefit of the provisions of the said act; and to provide any legislation which may be necessary and proper for the said act to be taken advantage of in any way in the State of Alabama."

The call also included the following clause:

"14. To provide for the payment of Alabama's current debts; for construction and maintenance of public roads; for matching Federal road funds; for keeping our schools open and the salaries of the teachers paid promptly; for reducing salaries, wages and appropriations; for abolishing useless offices and departments; for consolidating departments and for balancing the budget of the State."

The answer to questionnaire set out in RFC Emergency Relief Bulletin No. 1, August 2, 1932, issued in the administration of the Federal Act above mentioned, returned with the Governor's application made on account of the City of Birmingham and Jefferson County, contain this statement:

"(2) (a) The City and County have made commitments in aid of relief work, and notwithstanding lack of authority or doubts as to their authority, to the extent of $105,000 in respect to expenditures which are past due. • • •

"(c) There is no relief to be expected under existing law from State government funds • • • and the local relief agencies have been advised by the Governor that it is not possible for the State to participate in direct relief, as a result of both the condition of the State treasury and of constitutional inhibitions. • • •

"(e) There are no other sources from which relief may be expected except such funds as may be made available under the Emergency Relief Act. • • •

"III. There has been no emergency action to provide relief funds taken by the State since January 1, 1931. The State is inhibited by constitutional limitations. • • • Relief in the industrial areas through action of [fol. 166] the Legislature or amendment of the Constitution will be seriously handicapped by the unwillingness of the people to remove constitutional limitations. In the majority of the counties of the State, although grave want, unemployment and even destitution exist, the people as a whole are not in danger of starvation, and it will be difficult if not impossible to obtain a ratification of constitutional amendments which would remove the limitations upon the industrial counties, where the destitution is ominous.

"Unless relief is immediately forthcoming, the relief agencies in the City of Birmingham and Jefferson County will be forced to suspend their relief work and no alternative can be expected other than wholesale starvation or disorder. The suspension of this service would mean that approximately 10,000 families, consisting of 50,000 people, or one-seventh of the population of the County of Jefferson, would be without food or any source from which it could be obtained.

"The foregoing is the existing situation as to organized relief agencies, which does not by any means reflect the total of destitution in Jefferson County. Numerous employers or former employers of labor are extending credit, not reflected in the above report, as are practically all citizens of the County in position to respond to direct appeals. The standing under-employed (below the margin of sustenance) are estimated at 40,000 heads of families, reflecting an ominously large proportion of the total population of the County."

Proposed Amendment to Constitution

By Joint Resolution (No. 11, Acts Ex. Sess. 1932, p. 12), passed by the House of Representatives August 30, 1932, and by the Senate September 6, 1932, there was submitted to the electors a proposed amendment to the Constitution to authorize counties and municipalities to borrow money from the RFC under the Emergency Relief and Construction Act of 1932, even if in excess of their Constitutional debt limits, and use of funds in furnishing relief and work relief to needy and distressed people, and in relieving the [fol. 167] hardships resulting from unemployment, etc. The proposed amendment also included the following clause:

"Each municipality and each county in the State is authorized to appropriate funds for furnishing relief and work relief to needy and distressed people and to relieve the hardships resulting from unemployment, and any appropriation that may have heretofore been made by any municipality or county is hereby declared to be legal."

This submission followed very general expression of doubt by county authorities and County Attorneys as to the validity of the use of County funds for direct relief. This amendment was submitted to the electors at the election held November 8, 1932, and was rejected by a vote of — for and — against the proposed amendment.

Following the rejection of this amendment the Legislature promptly enacted by Act No. 289, approved November 14, 1932 (Acts 1932, p. 283) a law to enable County

authorities to make provision for the care of the poor and needy by statute reading as follows, effective immediately:

> "SECTION 1. That the Court of County Commissioners, the County Board of Revenue, or other governing body in any County shall have the power and authority, with the approval of the State Child Welfare Department, to make other or further provision for the care of the poor and needy of each or either of the counties. The disbursement of any funds to be made through such agencies and in such manner as may be approved by the State Child Welfare Department."

Counties had previously been authorized by Act No. 339, approved July 2, 1931 (Acts, 1931, p. 397), to make appropriations of funds "to be expended by the County Board of Child Welfare for the relief of children under eighteen (18) years of age."

[fol. 168] [NOTE.—An Act for the aid of crippled children by authorizing the State Board of Education to comply with the provisions of the Federal Social Security Act, and to extend the service now maintained by the State Board of Education for locating crippled children, was adopted in 1935 (Acts 1935, p. 870).]

The statutory provisions in Alabama in addition to the foregoing in relation to the relief of destitution include the following grants of authority to counties. There has been discovered no statute purporting to authorize any state office, board or department to disburse state funds for direct relief of destitution.

(a) With the additional provisions herein mentioned, Section 6755 (13) of the Code, which has been in effect for many years in Alabama, makes provision for the only authority granted to the counties in relation to the relief of destitution or unemployment (that is, paupers or indigent persons), not in excess of $6.00 per month, other than through the general pauper laws contained in Chapter 50 of the Code (Sec. 2787 et seq.). See Michie's Code, Section 2806, note.

Prior to the Code of 1907, Commissioners' Courts in Alabama had been vested with a discretion in the application "of the well recognized power for the relief of paupers

within their jurisdiction"; but by sections new to the subject in the Code of 1907 (Section 1607) this power was limited to temporary provision for one month "and then [fol. 169] only in cases of emergency." The intent of the statute, as asserted in State v. Mims, 174 Ala. 233, at p. 235, from which the above quoted phrases are excerpted, was further confirmed by the provision of Section 1603, whereby the Commissioners' Courts are commanded "to prevent the poor from strolling from one district to another." These sections of the Code of 1907 (1603 and 1607) are found as sections 2792 and 2796 of the present Code.

The Extra Session of the Legislature in 1933 made no further provision relating to the matter of direct relief of destitution or unemployment with respect to State, counties or municipalities.

Nor is any direct legislation upon the matter found in the Acts of the Legislature for the sessions held in 1935 and 1936. By Section 18 of Act No. 19, approved January 31, 1935 (Acts 1935, at p. 35), relating to the imposition of an additional excise tax upon the storing or withdrawal of motor fuels, etc., it is provided that:

> "That the proceeds from one cent of said tax herein levied may be used by the Governor of the State of Alabama at any time within twelve months from the approval of this Act for the purpose of matching any United States Government funds on any fair and reasonable basis."

No one has challenged in the Courts the validity of the clause or the interpretation of Section 18 by the Governor or the delegation of power inherent in the clause, if it be construed as authorizing "matching" except in relation to federal aid of highway construction.

[fol. 170] For many years there has been known in public administration in Alabama the practice of matching federal aid funds in relation to the construction of highways, since the adoption of the Federal Aid Law of July 11, 1916, to which the State assented by the Alabama Highway Code adopted in 1927 (Acts 1927, p. 248, at p. 360; Michie's Code, 1927, Sec. 1397 (40)). The process of "Matching Federal Aid" in relation to the construction and maintenance of public roads in the State was included in the call for extraordinary session made by the Governor August 4, 1932, as quoted in Item 8 of the call, supra.

Under this Act it is understood that the Governor of Alabama during the twelve months period of his limited authority under the Act of January 31, 1935, above quoted, has made use of a portion of this fund to provide highway work intended primarily for relief, and that this application of the funds was accepted by the Federal authorities in the distribution of Federal relief monies as a contribution to depression relief by the State.

Inspection has disclosed no additional legislation which might have any bearing upon appropriation for poor relief or for direct aid for the relief of destitution or unemployment, other than an Act relating to hospital accommodations and services for the poor in counties having a population of not less than 75,000 nor more than 100,000 (Acts, S. S. 1932, p. 49).

H. D. Warner.

[fol. 171] *Duly sworn to by H. D. Warner. Jurat omitted in printing.*

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[fol. 172] EXHIBIT "A" TO AFFIDAVIT

| (1) Date of Roll | (2) Salaried Employees (Plant)* | (3) Salaries |
|---|---|---|
| 1930 | | |
| January | 50 | $9,758.19 |
| February | 49 | 8,875.60 |
| March | 49 | 9,715.26 |
| April | 49 | 8,941.27 |
| May | 55 | 9,640.06 |
| June | 55 | 9,435.39 |
| July | 57 | 9,868.92 |
| August | 56 | 9,791.21 |
| September | 54 | 9,618.48 |
| October | 55 | 9,666.00 |
| November | 55 | 9,634.17 |
| December | 55 | 9,779.58 |
| | | 114,724.13 |

* Does not include central office: approximately $90,000 for 1935.

EXHIBIT "A" TO AFFIDAVIT—Continued

| (1) Date of Roll | (2) Salaried Employees (Plant)* | (3) Salaries |
|---|---|---|
| 1931 | | |
| January | 54 | 10,495.29 |
| February | 58 | 10,686.12 |
| March | 57 | 11,533.27 |
| April | 60 | 11,281.83 |
| May | 60 | 11,393.08 |
| June | 59 | 10,844.80 |
| July | 58 | 10,667.71 |
| August | 62 | 11,437.28 |
| September | 60 | 10,713.20 |
| October | 57 | 10,473.94 |
| November | 57 | 10,152.08 |
| December | 57 | 10,358.33 |
| | | 130,036.93 |
| 1932 | | |
| January | 57 | 11,575.30 |
| February | 57 | 10,470.53 |
| March | 57 | 11,014.17 |
| April | 56 | 10,724.24 |
| May | 55 | 11,035.58 |
| June | 54 | 10,180.63 |
| July | 57 | 9,565.01 |
| August | 58 | 9,791.20 |
| September | 57 | 9,329.40 |
| October | 58 | 9,217.82 |
| November | 57 | 8,945.21 |
| December | 59 | 9,260.14 |
| | | 121,109.23 |
| [fol. 173] 1933 | | |
| January | 59 | 9,867.13 |
| February | 59 | 9,282.36 |
| March | 59 | 8,801.71 |
| April | 58 | 9,126.79 |
| May | 58 | 9,281.30 |
| June | 59 | 8,742.42 |
| July | 60 | 8,911.42 |

* Does not include central office: approximately $90,000 for 1935.

EXHIBIT "A" TO AFFIDAVIT—Continued

| (1) Date of Roll | (2) Salaried Employees (Plant)* | (3) Salaries |
|---|---|---|
| August | 59 | 9,242.40 |
| September | 62 | 9,659.60 |
| October | 64 | 9,495.42 |
| November | 63 | 9,770.78 |
| December | 65 | 10,043.67 |
| | | 112,225.00 |
| 1934 | | |
| January | 67 | 10,623.79 |
| February | 66 | 10,351.83 |
| March | 66 | 10,883.59 |
| April | 67 | 11,461.61 |
| May | 66 | 11,724.88 |
| June | 66 | 11,211.33 |
| July | 66 | 11,278.08 |
| August | 66 | 11,430.97 |
| September | 67 | 11,675.14 |
| October | 70 | 11,307.55 |
| November | 69 | 11,380.07 |
| December | 71 | 11,503.88 |
| | | 134,832.72 |
| 1935 | | |
| January | 69 | $11,942.93 |
| February | 69 | 11,654.64 |
| March | 69 | 11,580.12 |
| April | 71 | 13,307.99 |
| May | 69 | 12,076.03 |
| June | 70 | 11,844.64 |
| July | 74 | 12,143.71 |
| August | 74 | 13,497.31 |
| September | 74 | 12,629.70 |
| October | 72 | 11,593.13 |
| November | 72 | 11,685.62 |
| December | 71 | 11,707.01 |
| | | 145,662.83 |

* Does not include central office: approximately $90,000 for 1935.

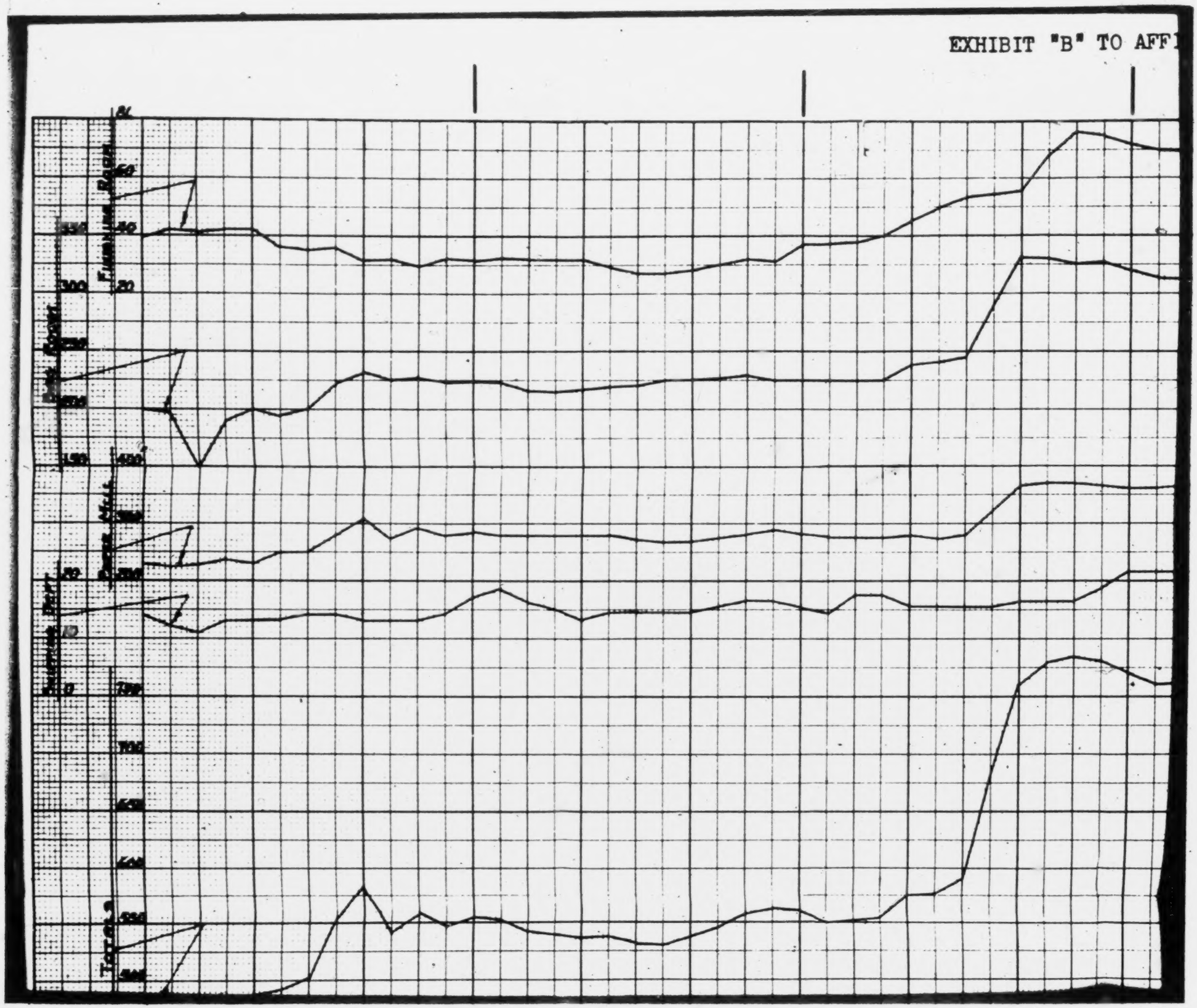
EXHIBIT "A" TO AFFIDAVIT—Continued

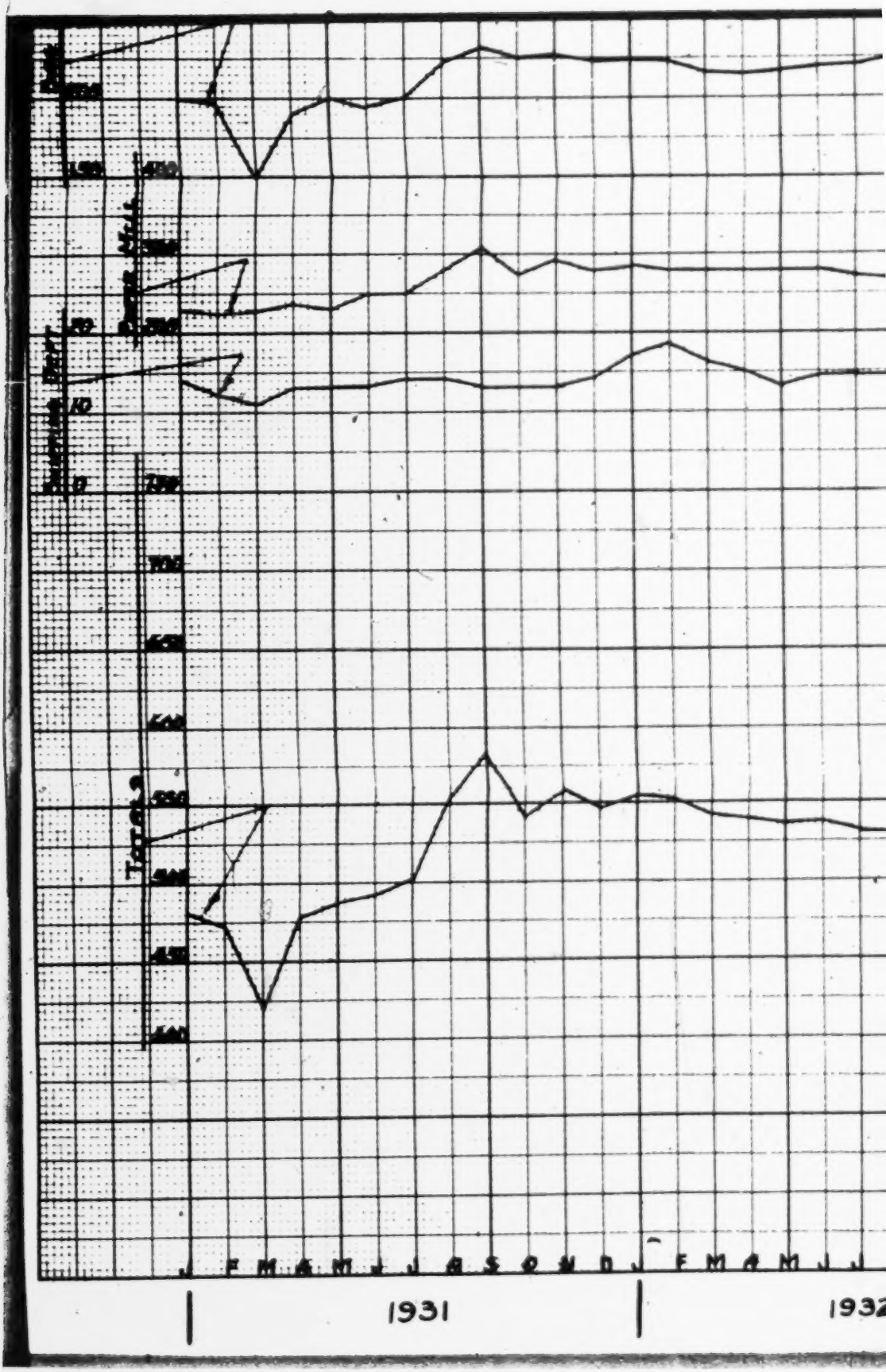
| (1) Date of Roll | (2) Salaried Employees (Plant)* | (3) Salaries |
|---|---|---|
| [fol. 174] 1936 | | |
| January | 72 | 12,119.20 |
| February | 72 | 12,551.94 |
| March | 72 | 11,923.20 |
| April | 73 | 12,317.77 |
| May | 74 | 14,062.58 |
| June | 72 | 11,902.81 |
| July | 71 | 11,987.15 |
| August | 71 | 13,368.14 |
| September | 73 | 12,951.31 |
| October (through 15th) | 71 | 5,789.44 |
| | | $118,973.54 |

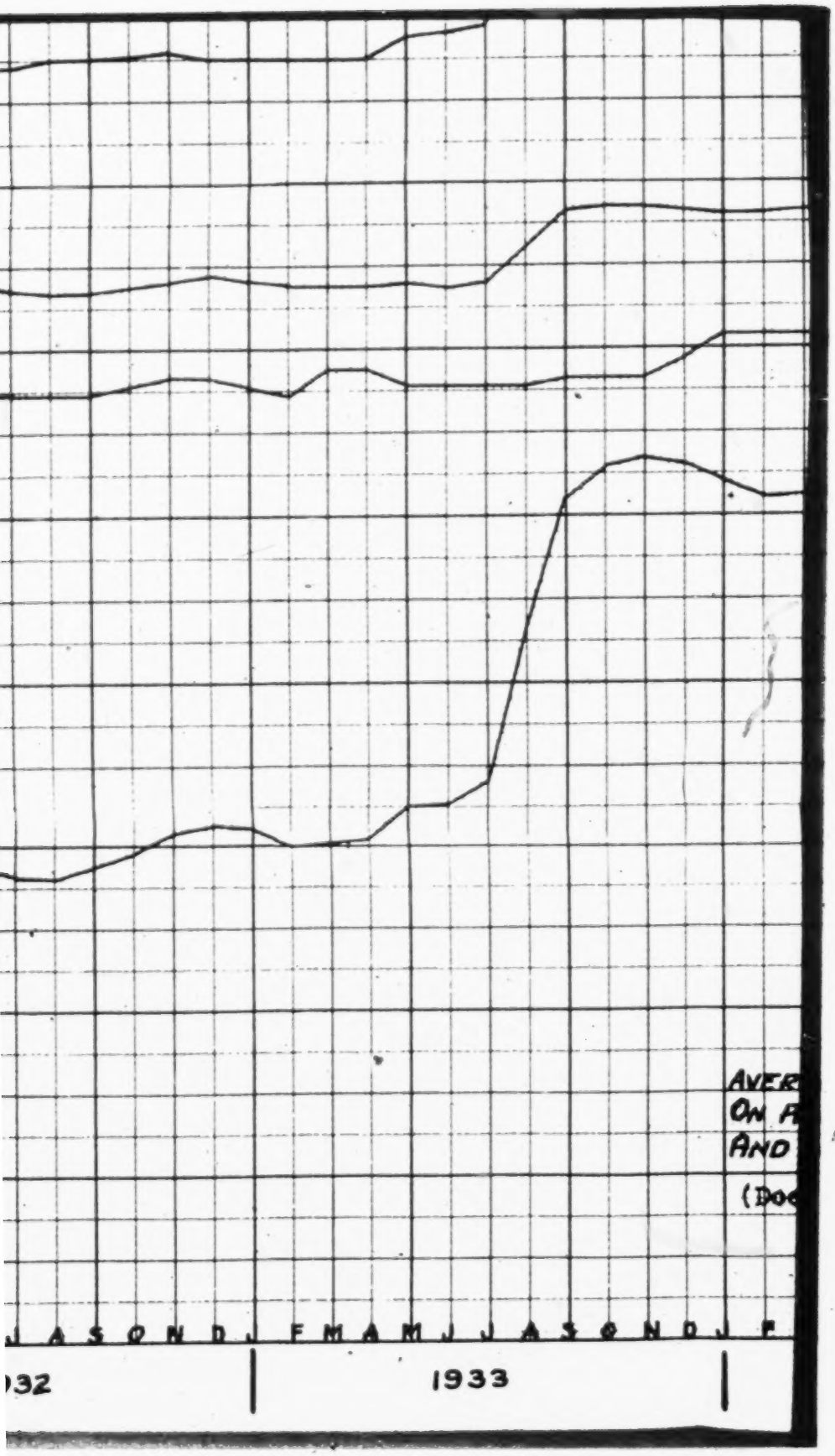
* Does not include central office: approximately $90,000 for 1935.

(Here follows one photo, side folio 175.)

EXHIBIT "B" TO AFF




J F M A M J J A S O N D J F M A M J J
1931
1932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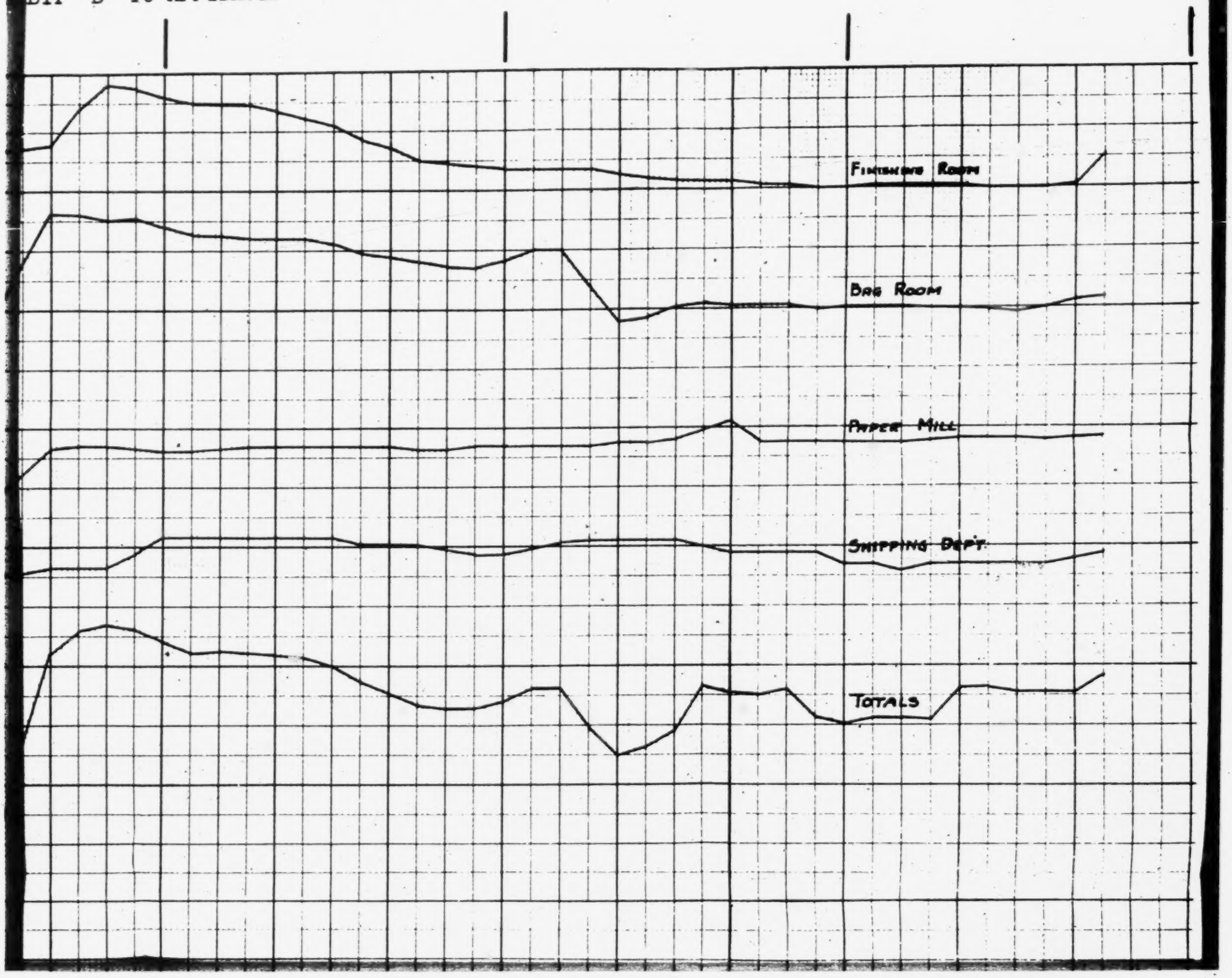
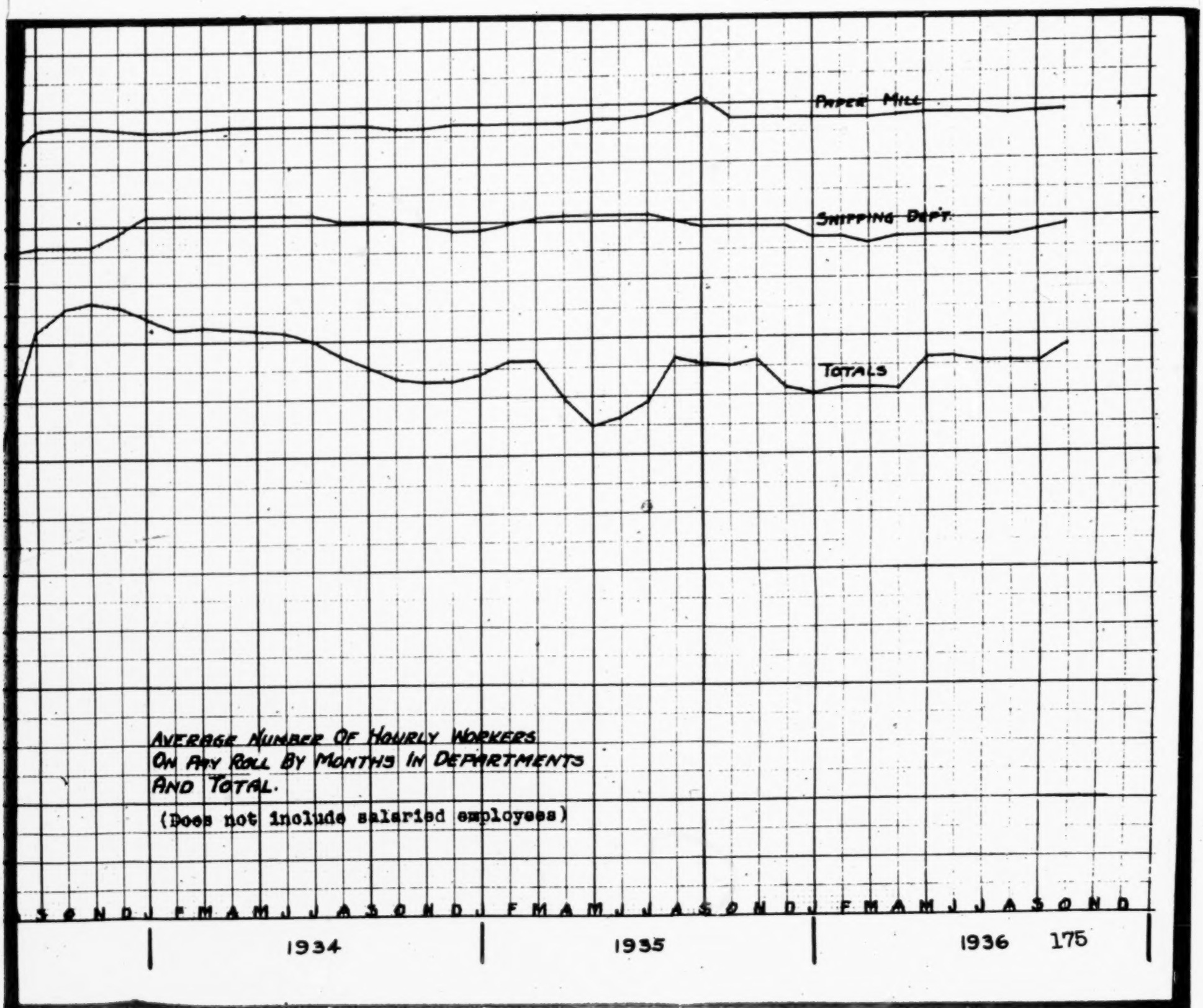
BIT "B" TO AFFIDAVIT






AVERAGE NUMBER OF HOURLY WORKERS
ON PAY ROLL BY MONTHS IN DEPARTMENTS
AND TOTAL.

(Does not include salaried employees)

[fol. 176] IN UNITED STATES DISTRICT COURT

## AFFIDAVIT OF HERBERT S. CRAIGMILE

### Goodyear Tire and Rubber Company

My name is Herbert S. Craigmile. I am Personnel Manager of Goodyear Tire and Rubber Company. I have made investigation of its books and records as to employment, payrolls, and other data referred to herein in connection with the application of the Alabama Unemployment Compensation Act.

This Company is engaged in the business of manufacturing automobile tires at its plant at Gadsden, Alabama. At the present time it is employing 1560 workers. The following is a schedule of employment at the plant, showing average number of employees during each month since the plant began operation in August, 1929:

Employees per Month

| | 1929 | 1930 | 1931 | 1932 | 1933 | 1934 | 1935 | 1936 |
|---|---|---|---|---|---|---|---|---|
| Jan. | ... | 1,087 | 960 | 829 | 686 | 771 | 928 | 849 |
| Feb. | ... | 1,076 | 980 | 821 | 650 | 818 | 966 | 857 |
| Mar. | ... | 998 | 1,029 | 815 | 638 | 836 | 971 | 941 |
| Apr. | ... | 1,022 | 1,042 | 751 | 641 | 884 | 957 | 1,030 |
| May | ... | 1,014 | 1,043 | 748 | 675 | 891 | 983 | 1,163 |
| June | ... | 996 | 1,035 | 748 | 787 | 888 | 1,000 | 1,298 |
| July | ... | 942 | 1,029 | 743 | 895 | 901 | 1,006 | 1,452 |
| Aug. | 1,195 | 911 | 1,021 | 736 | 872 | 846 | 986 | 1,549 |
| Sept. | 1,089 | 887 | 970 | 762 | 758 | 824 | 967 | 1,560 |
| Oct. | 1,035 | 849 | 924 | 759 | 720 | 817 | 883 | ... |
| Nov. | 1,000 | 854 | 853 | 742 | 715 | 819 | 846 | ... |
| Dec. | 957 | 863 | 779 | 734 | 716 | 872 | 840 | ... |

Aside from the general drop in employment in the years 1932, 1933 and 1934, due to the general depression, employ-
[fol. 177] ment at the plant varies seasonally to a moderate extent, due to seasonal fluctuation in demand for the product.

An approximate schedule of the contributions to the Unemployment Insurance Compensation Fund which would have been made by the company and its employees at the schedules provided by the Act had the Act been applicable during the period shown is attached hereto marked Schedule A. This schedule shows that total contributions by the Company during a nine year period would have amounted to $246,000.00, and its employees would have paid during the same period $108,700.00, creating a total fund of $354,700.00.

The total number of employees who left the service of the company for any reason, from January, 1930 through September, 1936, are shown by the following table:

| | Voluntary Quits | Total Exits |
|---|---|---|
| 1930 | 452 | 835 |
| 1931 | 176 | 483 |
| 1932 | 43 | 192 |
| 1933 | 49 | 303 |
| 1934 | 53 | 160 |
| 1935 | 74 | 270 |
| 1936 | 135 | 218 |

[fol. 178] Analysis has been made, by actual inquiry and investigation in approximately 131 individual cases, selected at random, of the cause and purpose of withdrawal from the company's employment, for the purpose of estimating the proportionate number and percentage of employees who would have been eligible for benefits, had the act been in operation since 1930.

While in my opinion there can be no exact computation of the amount of benefits which would have been payable, because of necessarily variant factors determining eligibility, involving every possibility of the employees' previous earnings and employment and subsequent disposition of his time and energy, the attached tables, marked Schedule B, Schedule C, Schedule D, are constructive applications of the benefit provisions of the Act to former employees of this company which present an approximate picture of what would have happened, based on the various assumptions stated.

In each calculation doubts have been resolved in favor of greater or maximum benefits.

The opinion as to the ratio of eligibles is based upon the study of the representative group of 31 actual exits. The further assumptions stated are explained in the tables.

A large percentage of the labor at this plant came from the surrounding rural territory. Many of the employees continue to reside upon farms, which continue to re-absorb a substantial proportion of the exits.

[fol. 179] It is, moreover, to be noted that the period reflected in the attached statements covers the period of the greatest and most prolonged depression of modern times, and can not be regarded as a normal test for unemploy-

ment to be expected for the period beginning October 1, 1938.

This Company's policies as to work and employment and their effect upon the life and welfare of the community have the approval of the city government and civic organizations in the area. Although necessarily dependent upon the current market for the product and therefore subject to some ebb and flow incident to the operation of the competitive American system of industry, the curtailment of employee personnel to adjust output to demand is not excessive nor too great for the area to absorb.

In the opinion of affiant, based on his knowledge of the facts, the by-products or indirect results of operation of the plant in the area have, even during the depth of the depression, more than supported employment in excess of the number of exits from the plant at any time seeking employment.

In the opinion of affiant, based on market studies and the business forecast of the management, the total and range of exits at this plant to be anticipated in the future will be materially less than has been the record during the depression period.

Herbert S. Craigmile.

Sworn to and subscribed before me, this 28 day of October, 1936. Joseph H. Johnson, Notary Public.

[fol. 180] SCHEDULE "A" TO AFFIDAVIT

Estimated Contributions

(Assuming Act in Effect Starting January 1930)

Goodyear—Gadsden

| | | Total Payroll | Rate | Total Contributions to Fund |
|---|---|---|---|---|
| | 1930 | $1,047,363 | 1.9% | 19,900 |
| | 1931 | 1,030,559 | 2.8 | 28,800 |
| | 1932 | 698,730 | 3.7 | 25,800 |
| | 1933 | 674,979 | 3.7 | 25,000 |
| | 1934 | 911,050 | 3.7 | 33,700 |
| | 1935 | 1,019,879 | 3.7 | 37,700 |
| Approx. | 1936 | 1,895,000 | 4.0 | 75,800 |
| Est. | 1937 | 1,800,000 | 3.0 | 54,000 |
| Est. | 1938 | 1,800,000 | 3.0 | 54,000 |
| | Total 1930–1938 | | | $354,700 |

Schedule "A" to Affidavit—Continued

| | | Employer Contributions | Employee Contributions |
|---|---|---|---|
| | 1930 | 9,400 | 10,500 |
| | 1931 | 18,500 | 10,300 |
| | 1932 | 18,800 | 7,000 |
| | 1933 | 18,300 | 6,700 |
| | 1934 | 24,600 | 9,100 |
| | 1935 | 27,500 | 10,200 |
| Approx. | 1936 | 56,900 | 18,900 |
| Est. | 1937 | 36,000 | 18,000 |
| Est. | 1938 | 36,000 | 18,000 |
| | Total | $246,000 | $108,700 |

[fol. 181] SCHEDULE "B" TO AFFIDAVIT

Total Exits and Those Estimated to be Eligible for Benefits

(Goodyear—Gadsden)

| | | (1) Total Exits | (2) Excluding for known disqualifying conditions (100%–40%) | (3) Est. Eligible Exits (30%) |
|---|---|---|---|---|
| | 1930 | 835 | 500 | 250 |
| | 1931 | 483 | 290 | 145 |
| | 1932 | 192 | 115 | 58 |
| | 1933 | 303 | 182 | 91 |
| | 1934 | 160 | 96 | 48 |
| | 1935 | 270 | 162 | 81 |
| Approx. | 1936 | 320 | 193 | 97 |
| Est. | 1937 | 375 | 225 | 113 |
| Est. | 1938 | 275 | 225 | 113 |

Col. (1) Exits for all causes.

Col. (2) The analysis of 131 exits indicates on the face of the known facts that not less than 40% of the total exits are under conditions subsequent which make them ineligible for current benefits under the Act. These known facts include no further investigation as to re-employment, part time re-employment, return to class of farm worker, study as to duration of previous employment. Applying an estimated factor for these unknown conditions, it is estimated that the number shown in Col. (2) would be reduced to 30%, as shown in Col. (3).

Col. (3) Estimated exits remaining eligible after deducting 40% from total exits for known percentage disqualifications disclosed by study of 131 exits, it is estimated that, on the average, a further 30% of the total would be ineligible because of re-employment, transfer to ineligible employment, part time employment, removal from the State, failure to register for re-employment or to take employment offered, etc.; thus leaving a net total of 30% of total exits eligible for benefits.

[fol. 182] SCHEDULE "C" TO AFFIDAVIT

Weekly Earnings and Estimated Weekly Benefits

(Goodyear—Gadsden)

| | | Monthly Earnings | *Weekly Earnings | Maximum Weekly Benefits (50%) |
|---|---|---|---|---|
| | 1930 | $91.20 | $21.05 | $10.52 |
| | 1931 | 88.30 | 20.40 | 10.20 |
| | 1932 | 75.80 | 17.50 | 8.75 |
| | 1933 | 77.00 | 17.80 | 8.90 |
| | 1934 | 89.60 | 20.70 | 10.35 |
| | 1935 | 90.20 | 20.80 | 10.40 |
| Approx. | 1936 | 123.00 | 28.40 | 14.20 |
| Est. | 1937 | 120.00 | 27.70 | 13.85 |
| Est. | 1938 | 120.00 | 27.70 | 13.85 |

* Monthly earnings divided by 4-1/3 weeks.

fol. 183] SCHEDULE "D" TO AFFIDAVIT

Estimated Unemployment Benefits to Former Employees Based on Various Assumptions

(Goodyear—Gadsden)

| | | (1) Maximum benefits possible applied to total exits | (2) Benefits on total exits for 17 weeks | (3) Benefits based on 60% of total exits. See Sch. B, Col. (2) | (4) Est. Actual Benefits based on 30% of total exits. See Sch. B, Col. (3) |
|---|---|---|---|---|---|
| | 1932 | $32,500 | $29,400 | $17,600 | $8,800 |
| | 1933 | 58,820 | 46,350 | 27,800 | 13,900 |
| | 1934 | 38,420 | 27,200 | 16,300 | 8,150 |
| | 1935 | 70,800 | 48,200 | 28,900 | 14,450 |
| Approx. | 1936 | 112,000 | 76,100 | 45,700 | 22,850 |
| Est. | 1937 | 131,200 | 89,300 | 53,600 | 26,800 |
| Est. | 1938 | 131,200 | 89,300 | 53,600 | 26,800 |
| Excess (or deficiency) of fund—$354,700 (See Sch. A): | | 574,940 | 405,850 | 243,500 | 121,750 |
| | | (def.) $220,240 | (def.) 51,150 | (excess) 111,200 | (excess) 232,950 |

Col. (1) Based on total exits, at 50% of average weekly wage and assuming all the unemployed were eligible to participate in maximum benefits on the basis that the Act was effective January 1, 1930, and that the unemployed exits all started their employment at this time.

Col. (2) Based on total exits as in Col. (1) but assuming the unemployment period averages 17 weeks.

Col. (4) It is estimated that the per cent of total eligibles to total exits would not reach 30% were it not for the fact that the necessary effect of the Act is to put a premium upon abstention from employment during the running of the benefit.

[fol. 184] IN UNITED STATES DISTRICT COURT

## AFFIDAVIT OF RICHARD H. CHILDERS

### Moore-Handley Hardware Company

My name is Richard H. Childers. I am Auditor of Moore-Handley Hardware Company, an Alabama corporation which has conducted a wholesale hardware business located at Birmingham for over fifty years. The Company has been in continuous operation of its business without cessation during this period. During 1935 its employees ranged from a low of 364 in January, 1935, to 388 on December 31, 1935.

I have examined and am familiar with the Company's records and statistics relating to its payrolls, employment, exits from employment, and re-employment, with particular reference to the years 1933, 1934 and 1935; also its payrolls for the two years prior to 1933; and also the records neces-

sary to the exact determination of the original date of continuous employment of those who left the service of the company during 1933, 1934 and 1935. This study was made for the purpose of making a constructive application of the Alabama Unemployment Compensation Act to the company based on the years 1933, 1934 and 1935.

The problem of unemployment has borne nominally upon this Company because of the fact of its continuous opera-
[fol. 185] tions and the adoption of a policy during periods of recession in gross sales to continue as far as practicable its regular employee personnel. Thus during the most severe test to which the Company in its entire history has been subjected, namely the low spot in the depression beginning in 1929, the recession in the number of employees did not follow the recession in the Company's sales. This is illustrated by the following comparison:

| | 1927 | 1932 | Decrease |
|---|---|---|---|
| Sales | $7,720,480.24 | $2,931,897.27 | 62% |
| Number of Employees (Dec.) | 380 | 290 | 24% |

In order to apply constructively the Act to the three actual years selected for analysis (1933-34-35), I have checked the records as to each of the regular employees who left the service for any cause during the years stated, numbering 29 for 1933, 24 for 1934, and 45 for 1935, and have ascertained in each case the circumstances under which the employee left the service. By ascertainment of the actual figures in each case, it has been practicable to determine with a reasonable degree of accuracy the extent to which these former employees would have become eligible under the definition of the Act to receive standard or extended benefits under its terms. In each case where doubt existed as to the amount of the benefit which would have been payable, we have estimated the benefit at the maximum permitted under the Act. In order to determine whether or
[fol. 186] not the employees leaving the service would be entitled to extended benefits, the duration of their service with the company was checked and extended compensation was allowed on the maximum basis ($15 per week) for the extended weeks of service contemplated by the Act.

The result of this analysis is set out on the following table:

| Total weeks of benefit payable for unemployment starting in | | Total benefits |
|---|---|---|
| 1933 | 255 | 3,825.00 |
| 1934 | 159 | 2,385.00 |
| 1935 | 209 | 3,135.00 |

If it be assumed that approaching 1933 the Act had been in effect for five years, and that the average rate of contributions applicable to industry as a whole were then applicable (3% against the employer and 1% against the employee), the following would show the accumulation in the fund and the excess of contributions over benefits payable to the former employees of this Company, based upon the assumption of eligible unemployment in all cases where not [fol. 187] specifically excluded by the analysis of our records:

| Year | Net payroll on which contributions payable | Total contributions at 4% | Excess over benefits |
|---|---|---|---|
| 1933 | $466,559.10 | $18,662.36 | $14,837.36 |
| 1934 | 568,362.23 | 22,734.49 | 20,349.49 |
| 1935 | 621,216.03 | 24,848.64 | 21,713.64 |
| | | $66,245.49 | $56,900.49 |

I have considered the matter of the cost of the necessary clerical service and records to keep and compile the statistics and make the reports which would be required of the company under the administration of the Act. In my opinion it would be not less than $2,000 annually. The keeping of the necessary records and the making of the necessary reports contemplated by the rules promulgated by the Commission will in my opinion require the full time services of an accountant or statistician of good ability, and in my opinion the estimate of $2,000 is conservative as applied to businesses employing from 200 to 500 employees.

The matter of the bearing of the Unemployment Compensation Act upon the policy of this Company has been discussed by the management, and I am able to state that on account of the duplication of cost which would be involved in the compulsory contribution to the compensation fund, with no tangible or appreciable benefit to the com- [fol. 188] pany, it would be necessary for the company to curtail its payrolls in periods of diminished activity rather than stand the expense of making sacrifices to continue the employment in accordance with the policy which has been heretofore established.

This Company's ad valorem, income and franchise and merchants license taxes, constituting all of the taxes paid by the company for the support of the State, County and City governments, amounted to an aggregate of $143,831.81 for the three years, and the company's tax for the support of the federal government (income and capital stock taxes) over the same period, 1933-1935, amounted to an aggregate of $56,653.80. Had the full average levy made against employers subject to the Act in the aggregate (3% during and after 1941) applied to the company's payrolls during 1933, 1934 and 1935, the amount of the aggregate contribution for the three years would have been $44,164.12, which added to the employee levy of 1% would have resulted in a total impost against this unit of industry for one single social objective amounting to 46% of its total direct contribution for all functions and objectives of State, County and City governments and 117% of its total direct contribution for all functions and objectives of the federal government.

Richard H. Childers.

Sworn to and subscribed before me this 17 day of November, 1936.

Minnie Daniel, Notary Public, Jefferson County, Alabama. (Seal.)

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[fol. 189] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF ALEX C. WELLMAN

Protective Life Insurance Company

My name is Alex C. Wellman. I am Vice President of Protective Life Insurance Company. The home office of the Company is in Birmingham, Alabama.

I am an actuary, and am accustomed to the compilation and analysis of statistics and statistical data. I have been engaged in performing the functions of actuary and statistician for eleven years. I have made investigation of the books and records as to employment, payrolls and other data referred to herein in connection with the application of the Alabama Unemployment Compensation Act.

Assuming that the benefits to be paid under the Act to employees subject to the Act who may become eligible under its terms are deferred until approximately October

1, 1938, I am of the opinion, based on my information of the available statistical data and my analysis of the conditions subject to which the benefits are payable, that it is not practicable to arrive at even an approximately accurate conclusion as to the amount of withdrawals which will be made by eligibles under the Act.

My reason for the conclusion stated is, first of all, that the amount of unemployment cannot be projected; that [fol. 190] basic data is lacking for the study of unemployment, its origin and duration as applied to individual employees, and that there is such a multiplicity of variables involved in the individual equation of unemployment, that no estimate can be projected two years into the future.

Even if unemployment data were available for any given period it would not be adequate for actuarial calculations to apply to future periods. The impact of unemployment is more acute on the down curve of a general depression. General depressions are cyclical and unpredictable both as to their severity and duration. Apart from the pool of floating unemployed characteristic of industry in Alabama, in the case of most of the employers reduction of personnel and consequent unemployment is usually small or negligible, succeeded by unpredictable periods of general unemployment. Funds that might be necessary and sufficient for what might be termed the normal periods of unemployment or referable to the floating pool of unemployed would be wholly inadequate on any basis of limitation for a general and continued period of depression, or to meet the adjustment of sharp changes in employment policy such as might result from the adoption of changed hours of service and radical increases in personnel such as resulted from the inauguration of the President's agreement and NRA require- [fol. 191] ments. For these reasons, fully applicable to employers and employees in Alabama, it can be asserted that there is no method of estimating the amount of reserves that would be necessary to be built up to meet adequately a general period of unemployment.

Even if basic statistical data were available as to withdrawals or average withdrawals in particular plants or in the aggregate in the State, it would not be practicable to set up or predict an average prospective unemployment period applied to the number for the time being unem-

ployed, or even to guess remotely what steps individuals would take to obtain employment or how individuals would employ their time.

During the general depression a large number of unemployed have had recourse to their original homes or vicinities on farms. This tendency to make use of the farm as a cushion to absorb unemployment is illustrated by the increase in the number of farms in Alabama from 257,395, as reported by the United States Census for 1930, to 273,455 in the year 1935. No one can foresee what effect the Alabama Unemployment Compensation Act would have upon this tendency to fall back upon the farms in periods of unemployment.

Moreover, each condition prescribed by the Alabama Unemployment Compensation Act for the receipt of benefits under the Act has elements that are unascertainable and [fol. 192] unpredictable, such, for instance, as the following:

(1) The full time weekly wage of the person becoming unemployed. The "full time weekly wage", as defined by the Act, does not correspond with the wages actually paid the particular employee upon which his and the employer's taxes were based. The Act computes the full time wage on a constructive basis by expanding his average unit wage to full time employment.

(2) It cannot be foreseen how many employed persons, prior to their unemployment, will have been engaged for the necessary number of weeks to qualify for initial or extended benefits.

(3) It cannot be foreseen *whether* how many employed persons would supplement their unemployment by partial employment.

(4) It cannot be foreseen whether such employed persons, or how many of them, would become farm employees or otherwise become ineligible for benefits under the fund. [fol. 193] It is practicable to apply the Act constructively to some individual plants or businesses, predicated, however, upon stated assumptions, and upon past record of employment and payrolls. Thus, in the case of the Protective Life Insurance Company, practically no unemployment has resulted which would have made former employees of

the Company eligible for the receipt of benefits under the Act had it been in effect during the period 1930 to date. This will be illustrated by the following table showing the number of employees by months for the six years ending December 31, 1935.

Number of Employees by Months for Six Years Ending December 31, 1935

| | 1930 | 1931 | 1932 | 1933 | 1934 | 1935 |
|---|---|---|---|---|---|---|
| January | 68 | 76 | 81 | 88 | 96 | 91 |
| February | 67 | 79 | 83 | 90 | 93 | 90 |
| March | 69 | 85 | 85 | 96 | 97 | 91 |
| April | 67 | 83 | 84 | 97 | 96 | 93 |
| May | 64 | 85 | 85 | 95 | 96 | 95 |
| June | 67 | 85 | 82 | 93 | 94 | 93 |
| July | 64 | 85 | 82 | 94 | 94 | 96 |
| August | 68 | 86 | 84 | 97 | 98 | 89 |
| [fol. 194] | | | | | | |
| September | 75 | 90 | 84 | 96 | 97 | 91 |
| October | 74 | 85 | 85 | 95 | 95 | 93 |
| November | 77 | 81 | 85 | 97 | 94 | 93 |
| December | 76 | 81 | 84 | 95 | 93 | 93 |

While this table shows the net number and does not indicate the number which at any given time left the employment, the statement may be made that the number leaving the employment over the period stated, except as a result of death or under circumstances which would not have made them eligible for benefits under the fund, is nominal if in fact any single employee would have become eligible during the entire period.

An analysis of these figures and of the facts under which this Company's personnel changes from time to time makes it clear that the application of the Alabama Unemployment Compensation Act would result in no tangible or appreciable distributions to employees or former employees of this Company, and such benefit as the Company might experience in return for its contributions to the fund would be such only as would be experienced by the public as a [fol. 195] whole.

Alex C. Wellman.

Sworn to and subscribed before me, this 17th day of October, 1936.

(Seal.) L. J. Caran, Notary Public.

[fol. 196] IN UNITED STATES DISTRICT COURT

## AFFIDAVIT OF HERBERT S. SALMON

### Bituminous Coal Industry

My name is Herbert S. Salmon. I have for several years represented the entire commercial bituminous coal industry or substantial sections of the industry in Alabama by reason of official connection with the Divisional Coal Code Authority under the National Recovery Administration, having been designated and acted as Presidential Member of the Divisional Code Authority during the life of the NRA Code, and having been Chairman of the Bituminous Coal Producers Board under the so-called Guffey Act until those measures were annulled by the United States Supreme Court. Since the annulment of the latter I have been President of Alabama Coals, Inc., an agency organized by certain of the coal producers in Alabama in accordance with the decision of the Supreme Court in the Appalachian Coals Case.

As a result of reports compiled from the various producers of coal in Alabama during the period of the NRA Code and Guffey Act administration, I am generally familiar with the statistical data of the industry in Alabama. Much data is available to me through the reports made by the units in the industry to the federal authorities and to the district boards mentioned above; from official or semi-official reports to the State Mine Inspector of Alabama; from reports issued by the U. S. Bureau of Mines and from reports issued by the U. S. Department of Labor.

[fol. 197] Based on this data I am able to give the annual production of coal in Alabama by tons for 1923-34; the average days operated by the Alabama mines for 1923-34; the increase or decrease of employees for 1923-34; and to estimate therefrom total wages for the same period. This data is set out in Table I.

Table I.—Statistical Data, Bituminous Coal Industry of Alabama

| Year | Annual production (tons) | Days operated | Average number employees | Increase or decrease in employees each year | |
|---|---|---|---|---|---|
| | | | | Inc. | Dec. |
| 1934 | 9,142,000 | 185 | 18,851 | 614 | .... |
| 1933 | 8,760,000 | 148 | 18,237 | .... | 2206 |
| 1932 | 7,857,000 | 107 | 20,443 | .... | 2530 |
| 1931 | 11,999,000 | 136 | 22,973 | .... | 1420 |
| 1930 | 15,570,000 | 189 | 24,393 | .... | 815 |
| 1929 | 17,944,000 | 231 | 25,208 | .... | 500 |
| 1928 | 17,621,000 | 222 | 25,708 | .... | 1907 |
| 1927 | 19,766,000 | 231 | 27,615 | 270 | .... |
| 1926 | 21,000,000 | 266 | 27,345 | 248 | .... |
| 1925 | 20,004,000 | 246 | 27,097 | .... | 859 |
| 1924 | 19,130,000 | 220 | 27,956 | .... | 2079 |

I am able to say that no data exists from which an accurate constructive application of the Alabama Unemployment Compensation Act could be applied even to past years, for the reason that no record is available as to the number of employees who left the service of the respective employers or the conditions accompanying their leaving or the amount of their "full time weekly wage" as provided by the Act, at their last employment, or what credits if other- [fol. 198] wise eligible would have applied against the $15 per week maximum compensation, or whether they would have been eligible for the full sixteen weeks of the maximum initial benefit period, or for any extended benefits. These uncertainties prevent accurate application of the Act to a past period without involving enormous and in fact impracticable research as to each employee leaving the service, and such application is no less impracticable for the period beginning two years hence, as contemplated by the Act.

Nevertheless there can be ascertained with reasonable accuracy the amount of the contributions which would have been paid by the industry had the Act been in force for the period 1923 through 1934.

If net increase or decrease in employment as applied to the industry as a whole be regarded as the test of eligibility to benefits, and if it be assumed that the net recession in the number of employees indicated eligibility for the entire number for the full initial period of sixteen weeks and at the maximum of $15 per week, then the withdrawals of benefits from the fund can be calculated approximately. The result is as set out below in Table II, assuming a con-

tribution equal to the schedule provided by the Act, and applying for the fifth year the average minimum of 3% levied upon coal mine employers in the aggregate subject to the Act plus a flat 1% levied upon the employees.

[fol. 199] Table II.—Estimated Wages, Taxes and Payments

| Year | Increase or decrease in employees each year | | Total wages | Tax | Payments based on $15 per week for 16 weeks |
|---|---|---|---|---|---|
| | Inc. | Dec. | | | |
| 1934 | 614 | .... | $12,762,000 | $510,480 | ..... |
| 1933 | .... | 2206 | 6,451,000 | 258,040 | 529,440 |
| 1932 | .... | 2530 | 6,561,000 | 262,440 | 607,200 |
| 1931 | .... | 1420 | 11,277,000 | 451,080 | 340,800 |
| 1930 | .... | 815 | 17,241,000 | 689,640 | 195,600 |
| 1929 | .... | 500 | 22,535,000 | 901,400 | 120,000 |
| 1928 | .... | 1907 | 22,828,000 | 913,120 | 456,080 |
| 1927 | 270 | .... | 26,409,000 | 1,056,360 | ..... |
| 1926 | 248 | .... | 30,114,000 | 1,204,560 | ..... |
| 1925 | .... | 859 | 27,730,000 | 1,026,010 | 206,160 |
| 1924 | .... | 2079 | 25,707,000 | 719,796 | 498,960 |
| 1923 | 1866 | .... | 28,220,000 | 536,180 | ..... |
| | | | | 8,529,106 | 2,954,240 |
| Excess Collections | | | | | 5,574,866 |
| | | | | $8,529,106 | $8,529,106 |

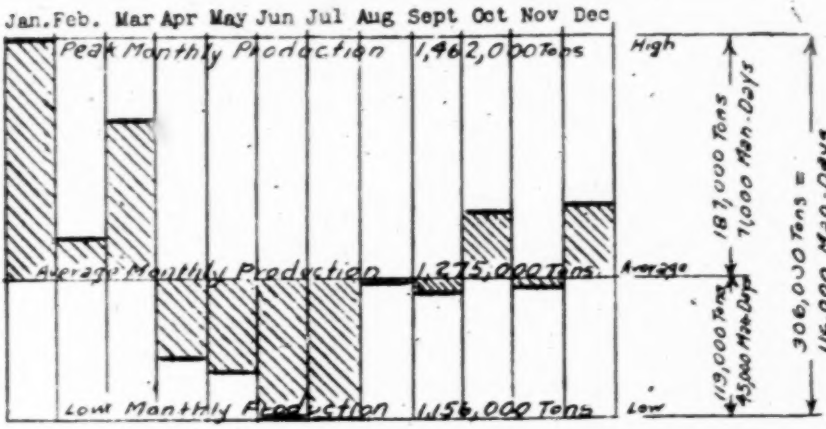
[fol. 200] As stated above, it cannot be assumed that this accurately portrays the full number of exits which might have become eligible to benefits during this period. On the contrary, it may well be that even if the number of exits be increased as not being accurately reflected in the net increase or decrease in employment from year to year, it is probable that a large number of the exits avail themselves of farm work and farm maintenance known to exist generally throughout the coal field. A large number of the miners in Alabama have been recruited from the farm population in the general vicinity of the mines, and make use of these farms as bases during times of low employment. This is particularly true as applied to the seasonal reduction in personnel or working time applicable to the coal industry; but this assertion is not intended to modify the statement first above made that it is obviously impracticable to compile an accurate constructive application of the operation of the Act. The above table does not carry forward any computation for extended allowance of benefits beyond the sixteen weeks period conditionally established by the Act. If it were assumed that the same number assumed to be eligible for fifteen weeks in the above table were in fact eligible for an extended term of ten weeks under the extended

[fol. 201] provisions of the Act at the full allowance of $15 per week, there would be an additional amount of benefits withdrawn of $1,839,000, which would reduce the excess in contributions over collections (benefits) during the period 1923-34, to $3,735,866.

The seasonal nature of coal production in Alabama is shown by the average production per month over the period 1921-35 set out on the following graph.

Graph Showing Average Monthly Production Alabama Coal Mines

Fifteen Year Period 1921-1935




During the past decade the number of employees in the Alabama coal industry has been reduced on account of decreasing production from approximately 30,000 to approximately 18,000. This shrinkage in employees would have [fol. 202] been even greater if there was not an attempt on part of employers in the industry in Alabama to spread the work among a larger number of employees than were actually required for economical operation in order to give a greater number at least partial employment. To illustrate by comparison the number of employees being held in the industry in Alabama, the Bureau of Mines for 1934 states that in Alabama the average tons per day per man was 2.62; in West Kentucky, one of Alabama's most vigorous competitors, the average tons per day per man is 5.11. In other words, twice as many men are being used in Alabama to mine an equivalent tonnage as are used in West Kentucky. While this is partially due to the great natural

handicaps and disadvantages of production, the spreading of work among a greater number of employees also contributes.

If this Act becomes and continues operative, there is no doubt that the industry will be forced to even greater mechanization. This will mean that machinery upon which no payroll tax is paid will be substituted for man power. The saving in contribution to the unemployment fund will to a large measure offset the capital investment in mechanization. It is obvious that such a program, which would be forced upon the industry if it is to remain in competition, will shift the burden of responsibility for employment of those now working in the industry upon the State. It is also obvious that such a program will reduce the contribution to the unemployment fund which would be represented by 4% of the wages that those employees would have earned.

[fol. 203] The amount of the contribution annually by the coal industry, exclusive of employee contributions, based on a production of 9,142,000 tons in 1934 (which is to be compared with the peak of 21,000,000 tons in 1926) would amount to $382,860 annually, assuming the application of the aggregate average 3% rate to the industry. This contribution amounts to 4.2¢ per ton. All cost and realization figures covering periods of 1933, 1934 and 1935, for Alabama commercial mines, furnished under NRA and the Guffey Act administrations, showed that Alabama producers operated at a loss varying from 3 to 6 cents per ton, exclusive of financing charges. This loss was due to high cost and inability to get a compensatory realization on account of competition of other forms of fuel and energy. To add another 4.2 cents to the cost simply means that Alabama coal is placed at a still greater disadvantage in its struggle for existence with its practically laborless competitors, natural gas, fuel oil and hydro electricity. Further loss in production would ensue and further unemployment. These competitive industries would contribute very little to an unemployment fund.

The reports furnished under NRA and referred to above showed further that the coal industry was assessed for the cost of state and local government operation, exclusive of [fol. 204] income taxes, a total of 5.92 cents per ton. The tonnage tax has since been reduced 1¢. On the basis of tax

payment of 4.92 cents per ton for taxes other than the tax contemplated in this Act the amount of such tax payments on the 1934 basis of production would be $449,790.

Herbert S. Salmon.

Sworn to and subscribed before me, this 17th day of October, 1936. L. J. Coran, Notary Public. (Seal.)

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[fol. 205] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF J. M. JACKSON, JR.

Alabama Water Service Company

My name is J. M. Jackson, Jr. I am Vice President and Treasurer of Alabama Water Service Company. I have made investigation of its books and records as to employment, payrolls and other data referred to herein in connection with the application of the Alabama Unemployment Compensation Act.

The Company is engaged in the operation of waterworks and other utilities within the State of Alabama. A schedule of its various operations within the State of Alabama since January 1, 1930, is shown on Exhibit A, attached hereto.

The total payroll of the company in all its operations during each of the years 1930 through August, 1936, and the total contribution which would have been made by the company and its employees had the Alabama Unemployment Compensation Act been in effect as of January 1, 1930, are shown by the following table:

| | Total Payroll | Rate of Contribution | Total Contributions |
|---|---|---|---|
| 1930 | $148,109.38 | 1.9 | $2,814.08 |
| 1931 | 140,111.38 | 2.8 | 3,923.12 |
| 1932 | 121,438.49 | 3.7 | 4,493.22 |
| 1933 | 119,497.56 | 3.7 | 4,421.41 |
| 1934 | 128,805.70 | 3.7 | 4,765.81 |
| 1935 | 168,589.84 | 3.7 | 6,237.82 |
| 1936 | 145,927.66 | 3.7 | 5,399.32 |
| | $972,480.01 | | $32,054.78 |

[fol. 206] I have examined the company's records for the period from January 1, 1930, to date with reference to every employee who has for any reaso left the service of the

company during that time, for the purpose of making a constructive application of the Alabama Unemployment Compensation Act to the company assuming the Act to have been in operation during the period. The total number of employees who have left the service of the company for any reason during this period is sixty nine.

The total number of employees on the payroll of the company during each month of the years involved is shown by the table attached hereto marked Exhibit B. Changes in the number of employees caused by the sale or purchase of plants during the period are explained on Exhibit B.

With reference to each of the sixty nine employees who have left the service of the company during the period (excluding those who left the service by reason of sale of plants, all of whom, so far as is known, continued in the service under the operations by the purchasers), I have ascertained the actual weekly wages paid, the date when service terminated, and have calculated the benefits which would have been payable to such employees under the Act, assuming that such employees would have been entitled to the maximum number of weeks of benefit. In many instances I have been able to ascertain what happened to these employees after leaving the service of this company and in calculating the total benefits which would have been [fol. 207] payable to former employees of this company during this period, I have excluded those former employees whom I know would have been ineligible for benefits by reason of having obtained other employment or for other reason.

Of the sixty nine employees who left the service during this period, 4 died, 25 resigned or voluntarily quit, 3 were transferred to affiliated companies, 36 were discontinued, and 1 left on account of illness. Of the 36 employees who were discontinued, 14 were discharged for cause.

Excluding from benefits each employee whom I ascertained obtained other employment after leaving the company, and excluding those who voluntarily resigned in order to get married and keep house, assuming payment for the maximum number of weeks allowed under the Act (26), the total benefits which would have been payable during the period would have amounted to $6,481.47. Deducting this from the total contributions which would have been paid into the fund by the company and its employees, as shown

above, the unexpended balance of the fund contributed by the company and its employees would have been $25,573.31.

Aside from construction forces, directly employed in new construction, my opinion is that the foregoing reflects a fair average picture of the application of the Act to water and electric utilities within the State of Alabama. The turn-over is extremely small, the reduction of personnel is ordinarily impracticable, even during times of depression. [fol. 208] The period to which the above application is constructively applied represents the period of greatest depression in the history of the utilities and in my opinion represents a period which would show maximum theoretical benefits under the Act, if any benefits are to be regarded as discernible under the facts stated. Comparison of the contributions and maximum theoretical benefits makes plain as to this Company (and utilities generally in the State) that the establishment of individual company plans or reserves in trust would provide much greater benefits and much greater assurance of unemployment relief. There is no competition as between taxable utilities in Alabama, or as between utilities within and without the state, such as might give rise to an advantage from uniform imposition of the levy or tax.

J. M. Jackson, Jr.

Sworn to and subscribed before me this 17th day of November, 1936. L. J. Coran, Notary Public.

[fol. 209] EXHIBIT "A" TO AFFIDAVIT

List of Water and Electric Plants Operated During the Period 1-1-30 to 10-31-36 by Alabama Water Service Company

| Water Plants | Electric Plants * |
|---|---|
| Abbeville | Andalusia |
| Albertville | Ariton |
| Andalusia | Banks |
| Attalla | Belleville |
| Bay Minette | Brantley |
| Bessemer | Brundidge |
| Brantley | Clio |
| Bridgeport | Dozier |
| Carbon Hill | Elba |
| Coffee Springs (Acq. 3-1-31) | Evergreen |
| Collinsville | Excel |
| Cordova (Acquired 4-1-31) | Frisco City |
| Decatur | Gantt |
| Dora | Glenwood |
| Eutaw | Goshen |
| Fort Payne | Kinston |
| Geneva | Luverne |
| Greensboro | Milo |
| Headland | Opp |
| Irondale | Red Level |
| Jasper | Repton |
| Leeds | River Falls |
| Monroeville | Samson |
| Newton | Troy |
| Oneonta | |
| Ozark | |
| Pinckard | |
| Prichard (Chickasaw)—(Acquired 8-1-36) | |
| Russellville | |
| Samson (Acquired 6-1-35) | |
| Sheffield (Tuscumbia)—(Sold 6-15-36) | |
| Wetumpka | |
| York | |
| Boaz | |
| Brighton | |
| Lipscomb | |
| Parrish | |
| Anniston (Sold 4-17-35) | |
| Girard (Sold 7-20-32) | |

* All acquired 6-1-35.

[fol. 210] EXHIBIT "B" TO AFFIDAVIT

Total Number of Employees by Months, Alabama Water Service Co.

| | 1930 | 1931 | 1932 | 1933 | 1934 | 1935 | 1936 |
|---|---|---|---|---|---|---|---|
| Jan. | 106 | 112 | 101 | 96 | 97 | 97 | 130 |
| Feb. | 106 | 107 | 102 | 96 | 97 | 97 | 134 |
| Mar. | 108 | 109 | 101 | 96 | 97 | 97 | 134 |
| Apr. | 106 | 116 | 101 | 96 | 97 | 97 | 134 |
| May | 105 | 110 | 101 | 96 | 97 | 89(a) | 134 |
| June | 104 | 106 | 101 | 96 | 97 | 130(b) | 134 |
| July | 103 | 107 | 101 | 96 | 97 | 130 | 131(c) |
| Aug. | 103 | 102 | 96(d) | 96 | 97 | 130 | 131 |
| Sept. | 103 | 102 | 96 | 96 | 97 | 130 | ... |
| Oct. | 135(e) | 102 | 96 | 96 | 97 | 130 | ... |
| Nov. | 120 | 102 | 96 | 96 | 97 | 130 | ... |
| Dec. | 116 | 102 | 96 | 96 | 97 | 130 | ... |

(a) Anniston Sold (8 employees).
(b) Alabama Utilities Co. Purchased (36 employees).
(c) Sheffield Sold (6 employees).
(d) Girard Sold (3 employees).
(e) Increase due to temporary construction work.

[fol. 211] [File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF F. W. GIST FOR DEFENDANT—Filed November 18, 1936

Before me, the undersigned authority, personally appeared F. W. Gist, who, being by me first duly sworn, did say upon his oath, that:

I am economic adviser to the Commissioner of Agriculture of the State of Alabama, and have held such position since February 1, 1936. For thirty years prior thereto, I was an Agricultural Statistician of the Department of Agriculture of the United States of America, and from 1915 to 1936 I was stationed in and resided in Alabama and was constantly engaged in the study of and in the recording of the conditions concerning agricultural acreage, production and values in Alabama. This included studies of outside occupations of farmers and their income supplemental to that which they received from farms.

From December 1, 1927, to February 1, 1936, I worked under a co-operative agreement between the Agricultural Department of the United States and of the State of Alabama, and was entitled "State and Federal Agricultural Stati-cian" in Alabama. Under this arrangement, it was my duty to observe, study and record matters relating to trade and industry as well as those relating to agriculture in

Alabama and during those eight years I continuously did so.

All of my work in Alabama has required me to be and [fol. 212] keep informed of the census reports of the United States Government and I am familiar with them. Recently, at the request of the Attorney General of Alabama, I have examined and studied particularly those parts of the reports of the United States Census of 1930, relating to the gainful employment of the population of Alabama and the various classifications of Alabamians engaged therein, their wages, unemployment, and other matters which appeared to me to be relevant to the Alabama Unemployment Compensation Law, its application in Alabama and those parts of the population of Alabama that are affected by said law.

I have also studied such other material as is available to me touching this subject, notably the index numbers reporting employment of wage earners which are published and issued by the United States Department of Labor, and I have applied said index numbers to the figures of the census and have compiled certain attached figures as a result thereof.

In the attached four pages, I have accurately copied from said census reports and from the said Department of Labor reports all the figures and the accompanying statements shown in these pages as being from such reports. From my observation, study and experience in my official capacity, I have made such figures and drawn such conclusions as are stated in these pages as not being copied; to the best of my knowledge, information and belief, my figures and my conclusions, as stated in these pages, are true, and as accurately as is possible for me, I have there truly pictured the conditions of employment in Alabama trade and industry on January 1, 1930, as shown by the United States census and the changes therein since that date and the changes [fol. 213] in prospect therein up to 1941 as such prospects are indicated by the proper statistical use of said index numbers and census figures. Insofar as the prospects can be reasonably arrived at from the materials at hand and from my knowledge and experience as observer, student, compiler and reporter of information concerning such matters, the prospective changes in trade and industry in Alabama up to 1941 are accurately figured in said pages.

(Signed) F. W. Gist.

Subscribed and sworn to before me at Montgomery, this 16th day of November, 1936.

Witness my hand and seal.

(Signed) Florence Ferrell, Notary Public, Montgomery, Alabama. (Impression Seal.)

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[fol. 214] EXHIBIT TO AFFIDAVIT

## Trend of Employment in Alabama

The United States Bureau of Labor Statistics has published since 1932 index numbers of employment in all groups of endeavor in Alabama. While these index numbers are based on December, 1931, as representing 100, it is possible to change the base to 1929, and calculate, relative to the official figures, a series of index numbers from 1929 down to and including 1935. So calculated, those index numbers are as follows, excepting the year 1930, for the reason that that year was not materially different from 1929:

| | |
|---|---|
| 1929 | 100.0 |
| 1931 | 66.5 |
| 1932 | 61.9 |
| 1933 | 67.7 |
| 1934 | 71.1 |
| 1935 | 72.1 |

The United States Census of 1930 reported the number of persons gainfully employed in Alabama, and also the number of salary and wage earners. These are stated as follows:

### Gainful Workers, Alabama, 1930

| | Persons Engaged | Salary and Wage Earners |
|---|---|---|
| Agriculture | 492,761 | 80,105 |
| Forestry and Fishing | 5,476 | 4,417 |
| Mining | 35,781 | 33,735 |
| Manufacturing | 185,681 | 130,034 |
| Transportation | 61,157 | 50,148 |
| Trade | 73,568 | 64,646 |
| Public Service | 12,914 | 12,914 |
| Professional | 39,657 | 35,968 |
| Domestic | 102,345 | 97,751 |
| Clerical | 31,321 | 31,321 |
| Construction | 10,075 | 9,956 |
| | 1,038,736 | 550,975 |

The difference between the two columns of figures represents what may be called owners of business gainfully occupied but not receiving salaries or wages and therefore not subject to the Unemployment Insurance Act. In the case of agriculture the difference also includes numbers of farm families working without stipulated pay.

Certain types of workers are exempted from the operation of the Unemployment Insurance Act. These are enumerated in Section 2, Paragraph C. It is possible to determine these exemptions from the United States Census of Occupations except for those mentioned in Paragraph 4, under Paragraph G, designated as "Service performed by an individual in the employ of his son, daughter or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother". It is believed that such of these persons as might otherwise be subject to the Act are few in number and would not affect the total [fol. 215] sufficiently to materially change the proportion of those exempt to those subject to the Act. Those persons thus exempt, the number of whom may be definitely determined, are given below:

| | |
|---|---|
| Agriculture | 80,103 |
| Manufacturing | 317 |
| Transportation | 19,479 |
| Trade | 4,145 |
| Public Service | 12,914 |
| Professional | 22,789 |
| Domestic | 42,865 |
| Total | 182,612 |

Subtracting this total number specifically exempted from the total number of salary and wage earners, there are left 366,363 persons who would have been subject to the Act in 1930.

The Act further exempts all establishments employing less than eight persons. The proportionate number thus exempted will vary in the different groups but a reasonable average deduction for such exemption would be about 25%. Therefore, it appears that the number of persons employed on salary and wages in 1930 who would have been actually subject to the provisions of the Unemployment Insurance Act, was, in round numbers, 276,000.

Using the index numbers on employment shown above, it is possible to calculate the number of wage earners which would have been so subject from 1931 to 1935, inclusive. These are shown as follows:

| | |
|---|---|
| 1931 | 184,000 |
| 1932 | 171,000 |
| 1933 | 187,000 |
| 1934 | 196,000 |
| 1935 | 199,000 |

From the reports of the United States Bureau of Labor Statistics we give below the average weekly wage and the average annual wage paid per person in Alabama in all groups of industrial employment for the years indicated:

| Year | Average Weekly Wage | Average Annual Wage |
|---|---|---|
| 1929 | $18.27 | $980.00 |
| 1931 | 16.53 | 808.00 |
| 1932 | 11.35 | 590.00 |
| 1933 | 11.95 | 621.00 |
| 1934 | 13.24 | 725.00 |
| 1935 | 14.76 | 767.00 |

The total wages paid, therefore, which would have been subject to the assessment of the premium for Unemployment Insurance would have been as follows:

[fol. 216]

| | |
|---|---|
| 1931 | $148,672,000 |
| 1932 | 100,890,000 |
| 1933 | 118,027,000 |
| 1934 | 142,000,000 |
| 1935 | 152,633,000 |

A somewhat uncertain and yet a reasonable projection of persons employed can be applied to succeeding years, which may be stated as follows:

| Year | Persons Employed | Annual Wage |
|---|---|---|
| 1936 | 205,000 | $795 |
| 1937 | 213,000 | 829 |
| 1938 | 221,000 | 855 |
| 1939 | 226,000 | 881 |
| 1940 | 234,000 | 907 |

The number of persons employed as given above is a continuation of the relative increase which occurred from 1932

to 1935. The weekly wage given, however, is an arbitrary addition of fifty cents per week to the average wage to 1935. Both these columns of figures are, of course, problematic, but, since they are used for the purpose of illustration as to the probable collections and probable benefits under the Unemployment Insurance Act, they may be accepted as reasonable. If they be so accepted, we can then set up probable figures as follows:

| Year | Annual Wages | Premium | Total Collected |
|---|---|---|---|
| 1936 | $162,675,000 | 1.9 | $3,689,000 |
| 1937 | 176,567,000 | 2.7 | 4,944,000 |
| 1938 | 188,956,000 | 3.7 | 6,991,000 |
| 1939 | 199,106,000 | 3.7 | 7,367,000 |
| 1940 | 212,238,000 | 3.7 | 7,853,000 |
| | | | 39,244,000 |

If in 1941 there should be a recurrence of unemployment somewhat equivalent to the period we have just come through, and employment in the industrial groups under consideration should drop to, say 170,000, we would find Alabama with something like 64,000 unemployed persons who would be entitled to the benefits of this Act. Since under the Alabama Law those entitled to benefits would receive 50% of their former wage, and assuming that the 1940 wage as shown above would be taken, each person would be entitled to $8.63 per week for sixteen weeks, or $138.00 for the period. Thus it would require $8,832,000 out of the accumulated funds to pay these benefits. The total collections shown above would, therefore, maintain the purposes of the Act for three and a half years without giving consideration to any further collections during that period.

It is interesting to note from the trend indicated by the index numbers given above that an average of 36.33% of the persons employed in 1929 were unemployed during the period 1931 to 1935, inclusive. This indicates the severity of the depression through which we have passed. It indicates, as well, the need for insurance against unemployment, and also indicates the cost involved in such insurance [fol. 217] in a period of unemployment such as has been experienced during the years under consideration.

The trend of employment in industry as compared with

the total number of persons gainfully occupied in Alabama from 1900 to 1935 may be stated as follows, the figures being taken from the reports of the United States Census for the year indicated:

| | Total Employed | Employed in Industry | Per Cent. |
|---|---|---|---|
| 1900 | 763,188 | 149,238 | 19.5 |
| 1910 | 997,524 | 213,252 | 21.4 |
| 1920 | 908,216 | 278,624 | 30.7 |
| 1930 | 1,026,296 | 345,295 | 33.6 |
| 1935 (Est.) | 1,029,000 | 230,699 | 24.3 |

The persons employed in industry shown above are those reported at each census as engaged in Mining, Manufacturing, Transportation, and Trade, and the total employed as given above includes all persons gainfully occupied. It will be noticed that the percentage of the total employed which was employed in industry showed a steady upward trend to 1930, but that from that year to 1935 the proportion employed in industry showed a considerable falling off in proportion to the total employed. The figures for 1935 are estimated by using the index numbers first set out in this discussion. The falling off in industrial employment disclosed by the figures for 1935 is believed to be due to the proportionate unemployment in industry, which is shown throughout this discussion, and that a material proportion of such falling off represents persons who have drifted back from urban employment to the rural homes from whence they came. This belief is confirmed by the fact that the United States Census of Agriculture for 1935 shows a considerable increase in the number of persons engaged in agriculture but without specific wages therefor.

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[fol. 218] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF J. L. KAUFMAN—FOR DEFENDANT—Filed November 18, 1936

Before me the undersigned Notary Public — and for said county and state personally appeared J. L. Kaufman, who

is known to me and who being by me first duly sworn, deposes and says:

(1) I was duly appointed, qualified and am acting as Chairman of the Alabama Unemployment Compensation Commission, hereinafter called the Commission, created under the provisions of the Alabama Unemployment Compensation Act (General Acts of Alabama, 1935, page — et seq. as amended); hereinafter referred to as the Act; that under my general supervision and control as Chairman, to the extent provided in said act, the Commission has administered, and is now administering, the provisions of such act in the manner required by the act and by section 10 thereof.

(2) The Commission has not engaged the services of any person or employee other than those authorized by the act and section 10 (d) thereof nor has the Commission engaged in any publication or propagandizing activities other than those authorized by the act and section 10 (c) thereof and reasonably necessary to the carrying out of such provisions; nor has the Commission expended any funds for any publication purpose other than for those prescribed by section 10 (c).

(3) The Commission has adopted rules and regulations requiring employers subject to the act to file with it such reports as are reasonably necessary to the efficient en- [fol. 219] forcement of the provisions of the act, and to keep such reasonable records with reference to the number and status of their employees as will enable the Commission correctly to determine the amounts of wages paid to their employees who are subject to the act and the proper amount of contributions due from such employees and the employer under the act. The general rules and regulations so adopted are not discriminatory or oppressive as to any employer, but are of a general nature applicable alike to all employers subject to the act and are reasonably necessary to the efficient and effective administration of the act.

(4) The act makes no provision for the imposition by the Commission of any summary or administrative penalty, and such penalties as are provided by the act, that is to say, interest at the rate of 1% per month on delinquent payments due as provided by section 14, and the criminal penalties for intentional violations or fraud provided by section 15 of the act, can only be enforced or imposed by an orderly

proceeding in a Court of law. I am informed and believe, and upon such information and belief state, that in any such action at law to enforce the payment of contributions due, with interest, or to impose the criminal penalties provided, any person could, and would have the opportunity to, assert every claim, right or immunity which he might have or claim under the Constitutions and laws of the United States and of the State of Alabama.

(5) The Commission has not threatened any person or employer subject to the terms of the act that in the absence of compliance with the act and payment of the contributions demanded, that it will not issue certificates with respect to credits under Title IX of the Federal Social Security Act. The Commission has made no such threats to the Southern Coal and Coke Company or the Gulf States Paper Company. The Commission has properly demanded [fols. 220-221] of the Southern Coal and Coke Company and the Gulf States Paper Company, as well as all other employees subject to the act, that they pay the proper amounts of contribution due from them under the terms of the act. The Commission has no power to compel the grant or denial of any credit or off-set against the tax levied under the terms of Title IX of the Federal Social Security Act, and unless the contributions required to be paid under the Alabama Act are in fact paid by the person claiming the right to such off-set or credit, the Commission is without authority to issue, and cannot issue, to any such person a receipt or certificate such as might entitle such person to any credit under Title IX of the Federal Social Security Act.

(6) That hereto attached as Exhibit "A", is a true and correct copy of the "Employers Contribution Report Covering Employer and Employee Contributions", which is the general form required by the Commission, filed with the Commission by the Southern Coal and Coke Company, showing the number of its employees and the hours worked, by the week, for the period from May 1, 1936 to August 31, 1936, with dates inclusive.

(7) It appears from this report that for the two-week period ending May 15, 1936 the Southern Coal and Coke Company employed 324 persons, subject to the Act, for a total of 22,917 hours; that for the two-week period ending

July 15, 1936 the number of employees declined to 306, but that the total hours of work declined to 15,924, showing an apparent total unemployment, during the latter period, of 18 employees, and partial unemployment of the remaining 306 of approximately fifty per cent or approximately thirty-three and one-third per cent according as the percentage is calculated upon the minimum (for the two-week period ending July 15) or maximum (for the two-week period ending May 15) number of hours worked.

. . . . . .

[fol. 222] (11) Except as restrained therefrom by the Courts the Commission will continue to administer the Alabama Unemployment Compensation Act in accordance with its provisions.

J. L. Kaufman.

Sworn to and subscribed before me this the 17th day of November 1936.

Florence Ferrell, Notary Public, Montgomery County, Alabama. (Seal.)

(Here follow two photos, side folios 223 and 223½)

COPY

# EXHIBIT "A" TO AFFIDAVIT

SOUTHERN COAL AND COKE CO.
BOOTHTON, ALABAMA 12-00089

Form C.B. No. 2
Alabama U.C.C.

## EMPLOYER'S CONTRIBUTION REPORT COVERING EMPLOYER AND EMPLOYEE CONTRIBUTIONS

For the Period ~~January 1~~ May 1 through ~~April 30~~ August 31 1936, Due not later than ~~September~~ October 28, 1936.

Location of establishment covered by this report BOOTHTON, ALABAMA
(If address is different from that shown above in right hand corner.)

| (1) Duration of pay period | | (2) Date of end of period | (3) Number of covered employees | (4) Total hours worked by covered employees | (5) Money wages | (6) Money value of Other remuneration | (7) Total earnings Cols. 5 and 6 |
|---|---|---|---|---|---|---|---|
| Week | 1 | | | | | | |
| | 2 | | | | | | |
| | 3 | | | | | | |
| | 4 | | | | | | |
| | 5 | | | | | | |
| | 6 | | | | | | |
| | 7 | | | | | | |
| | 8 | | | | | | |
| | 9 | | | | | | |
| | 10 | | | | | | |
| | 11 | | | | | | |
| | 12 | | | | | | |
| | 13 | | | | | | |
| | 14 | | | | | | |
| | 15 | | | | | | |
| | 16 | | | | | | |
| | 17 | | | | | | |
| | 18 | | | | | | |
| | | Total | | | | | |
| Half Month | 1 | May 15 | 324 | 22,917 | $14,590.67 | | $14,590.67 |
| | 2 | May 31 | 317 | 22,194 | 14,274.61 | | 14,274.61 |
| | 3 | June 15 | 316 | 20,244 | 13,141.81 | | 13,141.81 |
| | 4 | June 30 | 312 | 18,881 | 12,210.96 | | 12,210.96 |
| | 5 | July 15 | 308 | 18,224 | 11,156.15 | | 11,156.15 |
| | 6 | July 31 | 313 | 20,189 | 13,541.99 | | 13,541.99 |
| | 7 | August 15 | 315 | 18,276 | 11,998.71 | | 11,998.71 |
| | 8 | August 31 | 317 | 20,729 | 13,310.21 | | 13,310.21 |
| | | Total | | | $105,025.11 | | $105,025.11 |
| Month | 1 | | | | | | |
| | 2 | | | | | | |
| | 3 | | | | | | |
| | 4 | | | | | | |
| | | Total | | | | | |
| Deferred payments if any | | | | | | | |
| | | Grand Total | | | | | $105,025.11 |

| | |
|---|---|
| Employer's Contribution (9/10 of 1 per cent of grand total Column 7) | $ 947.25 |
| Employee's Contribution (total of employees' contributions, each employee's contribution being 1 per cent of his wages) | 1,051.23 |
| Total Contributions | $1,998.48 |
| 1 per cent per month interest if delinquent from due date as set out above | |
| Corrections (if any) for previous over-payment | |
| Corrections (if any) for previous under-payment | |
| Total remittance enclosed | $ 1,998.48 |

(Make check payable to Alabama Unemployment Compensation Commission and send to 623 Adams Avenue, Montgomery, Ala.)

I certify that the information contained in this report, required in accordance with Section 10 (g) of the Alabama Unemployment Compensation Act, is true and correct in accordance with said Act. No part of the contribution reported as payable on behalf of the employer was deducted or is to be deducted from employees' wages.

Name of Employer SOUTHERN COAL & COKE COMPANY

By W. F. Puter

Date signed _____ Official Title President

On the first line of the signature, show the firm name as given in the address space at the top of the report (unless same has been changed, in which case show new or correct name). If the firm is a corporation, the second line must be signed by a qualified official; or if a partnership, by a partner. If signed by a corporation official, show title.

(See reverse side for Instructions)

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EXHIBIT "A"

166A

Reverse side
Form C.R. No. 2
Alabama U.C.C.

## INSTRUCTIONS FOR MAKING CONTRIBUTION REPORT

### Pay Roll Period

If you have weekly pay rolls (for all or some of your employees) use lines 1 to 18 for the 18 weeks from May 1 through August 29, 1936. (The week of April 26 to May 2 should be split to begin from May 1. The week of August 30 to September 5 should be included on the September report.) (The weeks need not be split between the months May-June, June-July, and July-August.)

If you have bi-weekly pay rolls, use as many lines as may be needed from 1 to 18, under "Week".

If you have semi-monthly pay rolls (for all or some of your employees) enter the total of each pay roll on Lines 1 to 8 for the 8 half months May through August, under "Half Month".

If you have a monthly pay roll (for some or all of your employees), enter the total for each pay roll for the 4 months, May through August, on the 4 lines under "Month".

### Deferred Payments

On this line should be entered all deferred payments—that is, all payments such as annual bonuses for services performed during the months for which this report is being made. After January 1, 1937 a supplementary report must be made for all such deferred payments, indicating the recipients and the period for which each payment is made. In all cases where the accrued value or the amount payable of a deferred payment is known, such amount should be included with money wages and reported for the month in which earned.

Employers having several pay rolls on the same bases within the same period must make separate report of each pay roll within the period on the same basis.

Total all pay rolls opposite "Grand Total".

### Date of End of Pay Period

In Column 2 the date desired is the date of the end of the pay period, not the date that wages are paid.

### Covered Employees

In Column 3, enter the total number of covered employees on the pay roll for the pay roll period and in employment as defined by Section 2 (g) of the Act. (See also Article V, Rules and Regulations, for excluded employment.)

### Hours Worked

In Column 4, enter actual hours worked by all covered employees whose remuneration varies with the number of hours they work; for employees on a fixed stipend, scheduled weekly hours should be substituted.

Employers who have not kept on their pay rolls a record of the hours worked by each employee may omit this column in making their first report. Such information must be supplied for all subsequent months.

### Total Earnings

Column 5 must contain the total cash wages paid for each pay roll period.

Column 6 must show the total money value of all remuneration other than cash for each pay roll period (See Article VI, Sections 600-619, Rules and Regulations).

Column 7 must contain the total earnings of all covered employees for each pay roll period and should equal the total of Columns 5 and 6.

## GENERAL INSTRUCTIONS

Fill out the report on typewriter or in ink. If you have separate pay rolls for separate establishments, enter the summary for each establishment on a separate sheet and attach to this form. The Commission will furnish extra copies on request.

Do not send cash. Remittance should be in the form of check or money order, payable to Alabama Unemployment Compensation Commission. Cash payments may be made to the Cashier of the Commission at 628 Adams Avenue, Montgomery, Alabama. (See Sections 717-719, Rules and Regulations.)

Additions for previous over-payments and deductions for previous under-payments can be made only upon specific authorization from the Commission and copies of such authorization should be attached to the report on which such corrections are shown. (See Section 716, Rules and Regulations.)

Send the original of the report to Alabama Unemployment Compensation Commission, Montgomery, Alabama, preserving monthly copy to facilitate verification by authorized representatives of the Commission. If one sheet is not sufficient to include all pay rolls of employers during reporting period, additional sheets of this form should be used, numbered 1, 2, 3, etc., in which event the monthly totals should be summarized and inserted only on Grand Total line of the last sheet of the group.

Additional forms may be secured on application to the Commission.

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[fol. 224] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF PEYTON BIBB

Publications of the Alabama Mining Institute.

Before me Florence Ferrell, a Notary Public in and for the State of Alabama, Montgomery County, personally appeared Peyton Bibb, who is known to me and who being by me first duly sworn, deposes and says:

I am over the age of twenty-one years and a resident of Birmingham, Alabama.

The Alabama Mining Institute located at Birmingham, Alabama is an association composed of, and financially supported by, coal mining operators of Alabama, for the purpose of fostering and advancing the interests of the coal mining industry in Alabama. Approximately eighty-five percent (85%) of the coal mining operators in Alabama, individual and corporate (and virtually all operators of mines with rail connections) are members of the Alabama Mining Institute, and this group produces approximately ninety-five percent (95%) of the coal mined and distributed in and from the State of Alabama. The offices and Board of Governors of the Alabama Mining Institute are either individual coal operators or executives of coal companies.

[fol. 225] The Southern Coal and Coke Company, located in Shelby County, Alabama, (the plaintiff in case No. 691, before this court) is a member of the Alabama Mining Institute, and Mr. George F. Peter, the President of the Southern Coal and Coke Company, is a member of the Board of Governors of the Alabama Mining Institute. The Alabama Fuel and Iron Company, located in St. Clair County, Alabama, is a member of the Institute.

The members of the Alabama Mining Institute file with it periodically reports of their operations.

During the current year, this Alabama Mining Institute has officially published and circulated generally in Alabama by mail and otherwise, a series of bulletins on the history of coal mining in Alabama. That attached hereto as Exhibit "A" and made a part hereof, is Bulletin Number Eleven, of this series entitled "Coal Mining in Alabama—Utilization and Distribution of Coal," published and circulated in October, 1936.

That hereto attached as Exhibit "B" and made a part

hereof is Bulletin Number Twelve of this series entitled "Coal Mining in Alabama—Coal Mining Employees," published and circulated in October, 1936.

I am informed by the officials of the Alabama Mining [fol. 226] Institute, and believe, and upon such information and belief, state that the facts and statistical data shown in these two Bulletins, except as therein otherwise indicated were correctly assembled and compiled from the reports of its own members and from data furnished it by carriers, coal sales agencies and other persons in Alabama; that the figures therein shown as having been taken from the records of the United States Government and the United States Bureau of Mines were correctly abstracted from such records.

Peyton Bibb.

Sworn to and subscribed before me this 17th day of Nov. 1936. Florence Ferrell, Notary Public, Montgomery County, Alabama. (Seal.)

EXHIBIT "A" TO AFFIDAVIT

# ALABAMA MINING INSTITUTE

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# *Coal Mining in Alabama*

## UTILIZATION AND DISTRIBUTION OF COAL

Alabama coal is produced on 31 seams of various grades, each having different characteristics, and adaptable to many uses.[1] It is prepared in various sizes and grades to meet customer requirements, the principal uses being for open grates, stoves, stationery boilers including steamships, railroad locomotives, blacksmithing, all types of heating plants, whether fired by hand, mechanical stokers or pulverizers, also for making gas and coke.[2]

The demand for Alabama coal, which compares favorably in quality with that mined in other competing states, increased steadily up to 1926 when the maximum production of over twenty-one and one-half million tons was reached. Since that time the production has decreased at an alarming rate, being reduced to around nine million tons

(1) Only about 10% of the coal produced in the State is "Lump" or other sizes known as "Domestic" Coal.

(2) The coal produced from most of the seams in this State are not adaptable or susceptible of use in making coke, either under the "High" or "Low" Temperature Carbonization processes; therefore, the product from such seams must be disposed of in its raw state.

during the years 1933, 1934 and 1935, or the lowest since 1900.

The table below shows a comparison of the consumption of Alabama coal for the years 1926 (peak year) and 1935:

| | 1926 Tons | 1935 Tons | Decrease Tons | Decrease Percent |
|---|---|---|---|---|
| Used for Domestic Purposes | 2,394,791 | 989,273 | 1,405,518 | 58.69 |
| Used for Railroad Fuel | 7,467,590 | 2,926,741 | 4,540,849 | 60.80 |
| Used for Steamship Fuel | 689,443 | 230,255 | 459,188 | 66.60 |
| Used in Steam Power Plants | 4,383,357 | 1,707,213 | 2,676,144 | 61.05 |
| Used in Making Coke | 6,573,631 | 2,846,518 | 3,727,113 | 56.70 |
| Total | 21,508,812 | 8,700,000 | 12,808,812 | 59.55 |

During the year 1926 about one-third of the coal produced was shipped outside the State, but in 1935 less than fourteen percent was used outside of Alabama.

CONSUMPTION OF ALABAMA COAL BY STATES

| | 1926 Tons | 1935 Tons | Decrease Tons | Decrease Percent |
|---|---|---|---|---|
| Alabama | 14,410,904 | 7,508,100 | 6,902,804 | 47.90 |
| Georgia | 2,344,461 | 374,100 | 1,970,361 | 84.04 |
| Mississippi | 2,043,337 | 295,800 | 1,747,537 | 85.52 |
| Louisiana | 1,720,705 | 200,100 | 1,520,605 | 88.37 |
| Florida | 387,159 | 182,700 | 204,459 | 52.81 |
| Tennessee | 322,632 | 69,600 | 253,032 | 78.42 |
| Other States | 279,614 | 69,600 | 210,014 | 75.10 |
| Total | 21,508,812 | 8,700,000 | 12,808,812 | 59.55 |

The heavy losses above noted are due mainly to the inroads or displacement of Alabama mined coal in its natural trade territory by laborless fuels and power, viz: natural gas, oil and hydo-electricity, together with coal produced at lower costs in other states.

This decline in consumption was the principal or proximate contributing cause (from 1926 to 1935) of closing

down one hundred and nineteen (119) coal mines (with rail connections) in Alabama and incidentally an enormous loss of capital invested therein; as well as the disemployment of approximately nine thousand mine employes.[3]

It represents an annual loss in cash income to the State of Alabama of over thirty million dollars ($30,000,000.00), of which over twenty-one million dollars ($21,000,000.00), or the equivalent of over five million "man days" work, was lost to coal mine employes. Also many million dollars were lost to those furnishing supplies, including farm products, to the mines and mine employes, to say nothing of the large amount in taxes lost to the State and counties.[4]

In addition to the above the public-carrier railroads serving the coal fields of Alabama have lost nearly ten million dollars ($10,000,000.00)[5] per year in freight revenue of which over four and a quarter million dollars ($4,250,000.00) would have gone to the railroad employes as wages. Needless to say, this also proportionately reduces the the market for the products of Alabama.

Not only the wage earners directly involved but every citizen of the State is consequently affected adversely by this decrease in income and curtailment in purchasing power above mentioned.

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(3) Also, the number of days work available to those now employed has decreased about 30% since 1926.

(4) Approximate loss per year (1926-1935):

| | |
|---|---|
| Mine labor and salaries | $21,471,412.00 |
| Mine supplies and equipment | 7,211,361.00 |
| Insurance premiums, royalties and miscellaneous | 1,530,955.00 |
| Taxes | 630,193.00 |
| Total | $30,876,921.00 |

(5) This does not include the revenue lost to privately owned railroads in the Birmingham district which handle a large tonnage of coal and coke and whose revenue and employment have also been materially reduced.

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A Trainload of Alabama Coal En Route to Market

EXHIBIT "B" TO AFFIDAVIT

# ALABAMA MINING INSTITUTE

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# *Coal Mining in Alabama*

## COAL MINE EMPLOYES

Due to the adverse geological conditions in the coal fields of Alabama, referred to in our previous issues, the production of coal per man is considerably less than elsewhere as shown by comparison below and table on page 3.

## NUMBER OF MEN REQUIRED TO PRODUCE 26 TONS OF COAL PER DAY

ALABAMA
SOUTHERN APPALACHIAN
VIRGINIA
HARLAN (KY)
WEST VIRGINIA
WEST KENTUCKY
ILLINOIS
INDIANA

In addition to the "miners", who break down and load the coal, a large number of "day men"[1] (non-producers) are required to operate and maintain the mine (including the tipple, preparation plant, etc., outside.)

The "day men" include many classes of skilled or semi-skilled labor, such as, engineers, motormen, electricians, bonders, wiremen, trackmen, rockmen, fanmen, weighmen, gas men, carpenters, machinists, blacksmiths, inspectors, supervisors, and others too numerous to mention.[2]

Furthermore, as most of the mines in Alabama are "slope" mines or "shaft" mines without natural drainage, they must be dewatered or freed of the accumulation of water which comes from underground springs and streams. Also, large quantities of surface water seep into the mines through crevices in the broken geological strata or cracks caused by subsidence of the overburden of the worked-out area and extending from the roof of the mine upward to the surface. This requires the purchase, installation and maintenance of large pumps and miles of pipe, at great expense, which are serviced by engineers, electricians, pipemen, pumpers, and their assistants, as well as heavy expense for power to pump millions of gallons of water daily upgrade several hundred feet.[3]

These various classes of labor are required in every coal mine, wherever located; however, a greater proportion of "day men" are needed in Alabama mines than in the mines of other states. This is due to the necessity of removing large quantities of rock (called "dead work") above or below the thin coal seams,[4] to provide sufficient head room for the mine workers and permit passage of mules, electric locomotive and mine cars. Also, the steep and variable grades

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(1) The "Day men" do all the work inside and outside the mine not performed by the "Miner." It requires about one "Day man" for each "Miner."

(2) Also many thousands of dollars must be spent for labor (as well as supplies) in opening and developing the mine before any coal is available for market.

(3) In some mines as much as 20 tons of water must be pumped out of the mine for each ton of coal produced.

(4) Some seams now being worked in Alabama are only 20 inches thick.



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underground caused by the necessity of following the pitching seams, which are broken up by faults, calls for more haulage men and timber men than are required in mines with thick, flat seams. Likewise, because of the much greater percentage of coal washed in Alabama, the number of men required to hand-pick the coal and operate the coal washing plants is far in excess of the number required in other states where only a very small proportion of the coal requires washing (over 73% of all Alabama coal is washed).

Because of these conditions and the relatively small amount of coal that can be broken down and loaded by the miner in Alabama, the production per man per day is much lower than it is in other coal fields. The table below is from the records of the United States Bureau of Mines for 1935.

| | Average Tons Per Man Per Day[5] |
|---|---|
| **Alabama** | **2.62** |
| **Southern Appalachian (part Tenn. and Ky.)** | **3.38** |
| **Virginia** | **3.84** |
| **Harlan Field (Ky.)** | **4.34** |
| **West Virginia** | **4.73** |
| **West Kentucky** | **5.11** |
| **Illinois** | **5.62** |
| **Indiana** | **7.75** |

In other words, it requires 10 men to produce 26 tons of coal per day (7 hours) in Alabama, whereas, less than 3½ men can produce that quantity in the same time in Indiana. (See illustration on front page.)

These conditions naturally increase the cost of production and reports of the Federal Government for 1934 show Alabama coal costs 13.34% more to produce than coal mined in the Southern Appalachian District—18.16% more than in Virginia—18.68% more than the Harlan Field (Ky.)—36.72% more than West Virginia—49.39% more than Illinois—and 52.61% more than Indiana. (West Kentucky figures are not available.)

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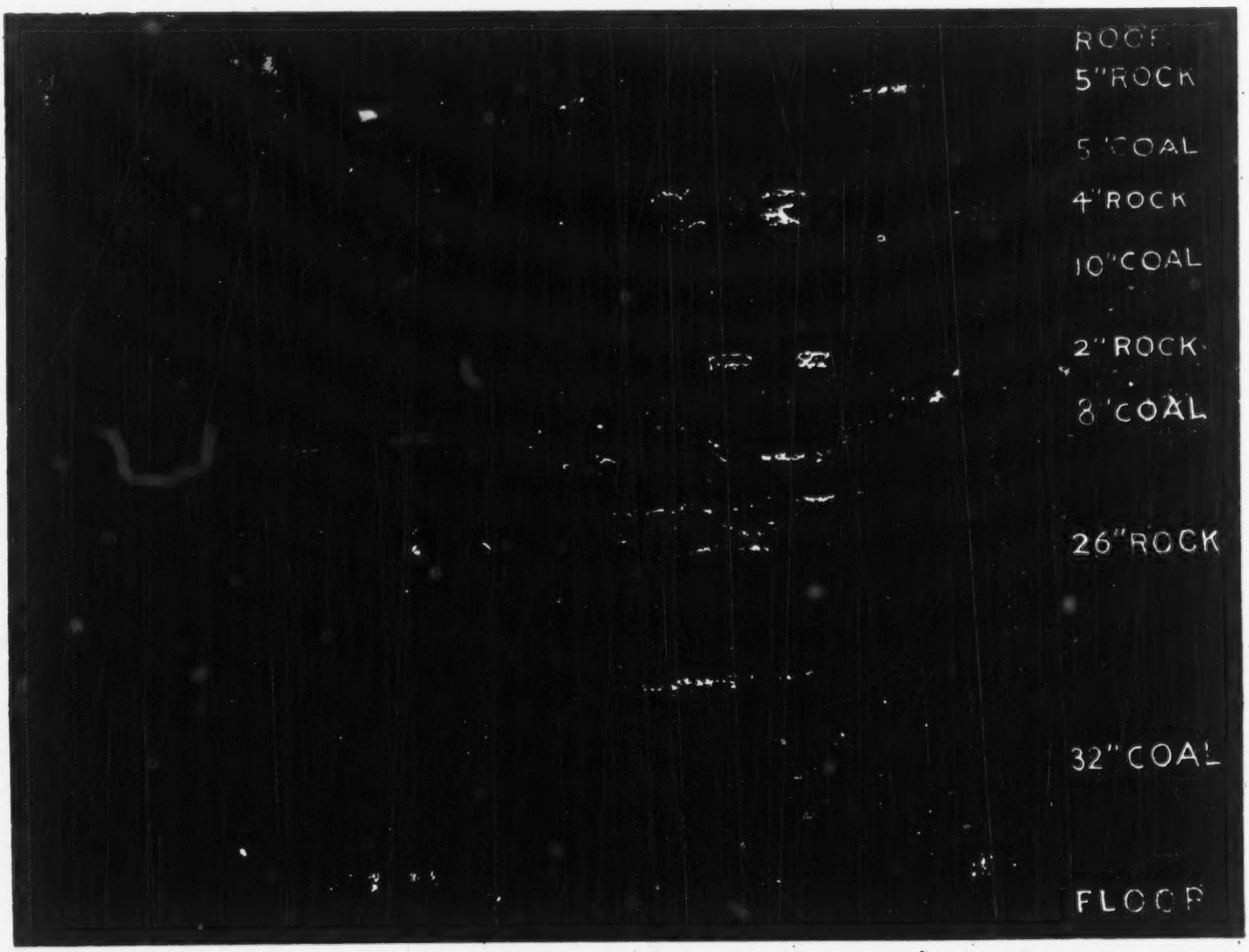
(5) "Tons per man per day" represents the total coal tonnage (per day) divided by the total number of mine employes.

*Mining on 20-inch Clean Seam in Alabama, Two Miles Underground*




*Working Face in Room of an Alabama Mine (on "Big Seam") Showing Partings of Rock Between the Layers of Coal. There Are Also Numerous Thin Partings of Rock Not Visable or Indicated in the Picture. These Impurities Must be Removed by Hand-picking and Mechanical Washing Before the Coal is Shipped to Market.*

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[fol. 235] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

**Findings of Fact and Conclusions of Law**—Filed December 15, 1936

STATEMENT

The Federal Social Security Act was approved August 14, 1935. The Alabama Unemployment Compensation Law was approved September 14, 1935, and amended by three Acts approved April 21, 1936. The Alabama Act follows the suggestions or requirements of the Social Security Act and has been approved by the Federal Social Security Board. The Alabama Act creates the Alabama Unemployment Compensation Commission to administer it, and its enforcement in court is required of the Attorney General of Alabama. Under the Alabama Act reports by employers have been required and payments, being payroll percentages in part deducted from employees' pay and in part paid by the employers, are already due and demanded. Failures to comply are punishable by cumulative penalties and by criminal prosecutions, all requiring court action. Two bills have been filed in this court seeking preliminary and permanent injunctions and other relief, against the members of the Alabama Unemployment Compensation Commission and the Attorney General of Alabama, one by the Southern Coal & Coke Company and one by the Gulf States Paper Company, and have been heard together by a court of three judges on the same evidence, and on their [fol. 236] respective pleadings. The Alabama Act is assailed as unconstitutional both under the equal protection and due process clauses of the Fourteenth Amendment, and under the Alabama Constitution, and the Social Security Act which is contended to be necessarily involved in the Alabama Act is assailed as being not within the powers of Congress and in violation of the due process clause of the Fifth Amendment. Other constitutional difficulties are alleged. Both preliminary and permanent injunctions are now for decision.

## Findings of Fact

1. There is in each case diversity of citizenship and more than three thousand dollars involved exclusive of interest and costs.

2. If payment be made of the sums demanded their recovery, if the Act be unconstitutional, would be uncertain and difficult, no clear and adequate remedy at law being apparent, and there would arise a multiplicity of suits with employees whose pay was withheld. If payment be refused so as to test the validity of the Act by a forced collection, penalties and criminal liabilities would be incurred if the Act be valid, both numerous and serious, so that the remedy by resistance at law is not safe and adequate. The remedy here sought in equity is more certain and effectual.

3. The Act seeks to alleviate the public evils and private hardships of unemployment. The evidence aided by common knowledge shows that Alabama was originally and still is predominantly an agricultural State, and that in agriculture unemployment is not an acute problem. The land may always be tilled and will yield a living though business conditions be adverse, and even the old and the ill are generally worth their keep on a farm. The development of capitalistic industry has created a great class who work for others and have no capital but only their capacity to work. [fol. 237] On the average they save nothing and make no adequate provision for illness, old age or unemployment. Illness and old age though fairly certain to come are spread out in time and space. Unemployment becomes acute and cumulative in periods of business depression, the unemployed especially in industrial communities are unable to help each other, or to help themselves, and suffer great distress, even starvation. Sickness is apt to occur, criminality is encouraged, and riot and revolution risked. The whole public is vitally interested in ameliorating the distress of such unemployment.

4. In the past no special legislative remedy for unemployment has been attempted. Poverty, however caused or by whomever suffered, has had the traditional relief in Alabama by poor laws, through the counties and their general taxation. This relief is limited and proved wholly inadequate during the great depression of the past few years.

5. The remedy proposed in the Act of Sept. 14, 1935, is, as interpreted in behalf of the State of Alabama in the answers, not a relief for indigence, but a scheme for compulsory insurance against unemployment, in which the beneficiary draws his benefits not because he is poor but because he has paid for them. The relief is not complete, for there is a waiting period during which nothing can be drawn, and the relief when it begins continues in general for only sixteen weeks, and covers but half the wage loss in those weeks. But it gives a support for a time within which new employment may be found or the old resumed, and keeps some money in circulation to uphold general business; relieving the cumulative collapse that so often attends either local or general business depressions. The means adopted by the Legislature is appropriate to the end in view.

6. At the passage of the Act there were no accurate and full data available on which actuarial estimates could be made of the fund and the contributions necessary to sustain [fol. 238] the proposed benefits. Unemployment, as it depends on business cycles, would seem hardly predictable. But the Legislature had the federal census of 1930, the investigations and tabulations of the Federal Bureau of Labor Statistics, and the data and suggestions assembled in connection with the Federal Social Security Act, besides the fund of general knowledge and the judgment which all Legislatures are supposed to possess. There were no special hearings touching the proposed law, but it had the usual constitutional delays in its passage. It was reconsidered for amendment in April, 1936. The Act is on its face somewhat tentative, in that the right to amend and repeal is expressly reserved, a delay of two years provided before benefits can be paid, and the Commission established is to get information and acquire experience which is to be made the basis of classifications and adjustment of rates after 1940.

7. The exceptions from the Act have discernible reasons which prevent them from being arbitrary. The peculiar status of agriculture and its slight need for the remedy have been above alluded to. Domestic service in homes is similar, such servants seldom being discharged in great numbers at once or left to suffer. The same is true of the employers of the near relatives mentioned in the Act. Service on ships in navigable waters, service on interstate rail-

way carriers, and for the United States and its instrumentalities are peculiarly subject to federal law, and impositions on employer and employee would run into peculiar difficulties. So also impositions on charitable institutions and their employees would burden the charities which are semi-public at best. The State and its instrumentalities are excluded for like reasons. Why solicitors and agents of insurance companies are omitted is not apparent.

[fol. 239] 8. The main classification is between employers of eight persons or more and those of less than eight. Some employers and employees are now by litigations opposing the law on the ground that it is arbitrary to include in the burdens and benefits of the law employers and their employees where there are eight employed and to exclude where there are only seven or six. No reason for the difference this made appears. It is suggested that very small payrolls would not yield much contribution nor pay to bother with. But from the employee standpoint the need of protection is not less because he works with fewer employees, and from the public standpoint the unemployment of a number of persons carries the same menace whether they formerly worked for large or small concerns. It is evident that six or seven high salaried employees would cause a much greater payroll than a dozen or fifty day-laborers. No reason is found for the inclusion alone of employers of eight or more persons; nor why less than all should be included. If a store having seven employees is competing with one having eight, it is manifest that the former can undersell the latter, and the latter must discharge one employee, or go broke and discharge all eight, equalizing wage reductions being forbidden.

9. The evidence shows that petitioners here, and many other employers of hundreds of workers each, have a record of few or no discharges except for cause for a number of years past even during the recent depression, and have no prospect of unemployment in the future; so that if the Act had been in force in the past they would have paid in many thousands of dollars each year, but their employees would have gotten almost nothing, and that the same thing will likely be true in the future. On the other hand many employments are habitually seasonal and fluctuating, unemployment being large and regularly recurrent, so that benefits in excess of contributions will be drawn and at the

expense of employers and employees of the more stable em-
[fol. 240] ployments. The pooling of funds for all employments under the Act will thus result almost certainly in making certain classes of business carry the burden of benefits to other classes. The general and indirect benefit to all business resulting from the disbursement of the benefits is not a practical off-set to this inequality. It is however also true that in a period of years every employer may meet disaster and have to curtail or cease operations, so that there is always the possibility of his employees drawing benefits above those indicated by his previous record.

10. Contributions required of employees are but premiums for an insurance protection. Contributions required of employers can hardly be called such. Employers have no direct benefit from the insurance fund. Such contentment as it may give employees, or such general improvement to business as its disbursement may cause are too indirect and vague to be measured. The direct effect of the law is to require the employer to pay about two-thirds of the premium necessary to protect the employee. It is equal to a compulsory increase by that much of the wages paid to be devoted to insurance for the employee's benefit. In the long run it might be absorbed in a general reduction of wages by force of business competition, next adverted to.

11. The business of both petitioners is interstate and in competition with others. In the coal mining business of one petitioner there is a great labor handicap in that because of geological conditions in Alabama a miner there cannot produce as much coal as in a mine say in Indiana. The burden of the Act might force the employer to reduce labor costs or go out of business. Nearly all business in the United States proceeds in competition with business in other States. Any special or other legislation burdensome [fol. 241] to business which may be adopted in one State will put the business of that State at a disadvantage in the competition. The State cannot protect itself by a tariff or otherwise curb the competitors in the other States by reason of the federal Constitution. Hence the necessity of coordination through the federal government, sought to be had in this instance by the Social Security Act.

12. The provisions of the Social Security Act did not intimidate the members of the Alabama Legislature into pass-

ing the Alabama Act, but did induce its passage by making it appear more advantageous to the State than not to pass it. The Legislature provided that if the federal Act should be held unconstitutional by the Supreme Court of the United States the Alabama Act shall become inoperative. The State of Alabama does not here complain that her freedom of legislation has been interfered with.

CONCLUSION OF LAW

1. The Court has jurisdiction, both federal and equitable.

2. The evils of unemployment are such as to be taken cognizance of under the police powers of the States and to authorize a remedy which is not forbidden by the Constitutions.

3. Compulsory insurance against unemployment though a new remedy in the United States of America is a possible one. Recognizing the troubles that have come from allowing the capitalist to hire the worker, it could be considered as a regulation, operating in future, conditioning the right to engage in such hiring. But the right to work for a wage, or to hire another, is among the fundamental liberties of the country and they cannot be arbitrarily narrowed or taken away. See Adkins vs. Children's Hospital, 261 U. S. 525. Whether the requirement of this insurance and the payments to support it be arbitrary or not depends on the state of society at the time and the urgency of the need for the regulation. Of such things the legislature is the primary judge. Several businesses, such as motorcarriage, [fol. 242] have been required to carry insurance. Marriage in Alabama could formerly be contracted only on giving a bond. We are not required in this case to give an opinion on this broad question of police power, because this legislation must fall on a narrower point.

4. If an insurance Act like this could stand up which either covered all employments (not excepted for valid reasons), or which classified employments so closely as to escape arbitrary imposition of burdens (see Mountain Timber Co. vs. Washington, 243 U. S. 219), the present Act denies due process in that the classification of employers having eight or more employees is entirely arbitrary. Whether viewed from the standpoint of employers or em-

ployees there is no reason for the distinction made, and equal protection of the law is not afforded either to employers or employees. Colgate vs. Harvey, 296 U. S. 404, 423, 425.

5. The requirement that employers pay about two-thirds of the contribution to the general fund for the direct benefit of the unemployed with no direct benefit to themselves violates the provisions of Art. I, Sec. 23, of the Alabama Constitution. Robertson vs. Collins, 218 Ala. 54.

6. The Social Security Act, supposing it to be valid, did not operate either to coerce or bribe the Alabama Legislature so as to impair the validity of their legislative action. The motives of legislators cannot at the instance of private litigants be inquired into by courts. Fletcher vs. Pock, 6 Cranch, 87, 130; 131; United States vs. Des Moines R. R. Co., 142 U. S. 545; Anglo vs. Chicago R. R. Co. 151 U. S. 17, Cooley Const. Lims. (8 Ed.), p. 379, 380.

7. The Alabama Act being disposed of because the Court finds it to be violative of the Constitution of the United States and that of Alabama, it is unnecessary for this Court to pass on the constitutionality of the Federal Act. (Tennessee Publishing Company, Petitioner, vs. American National Bank, decided by the Supreme Court of the United States, November 9th, 1936.) We make no decision and ex-
[fol. 243] press no opinion as to the constitutionality of the Federal Act.

Chamberlin, Inc., vs. Andrews, 271 N. Y. 1, affirmed by an equal division of the Supreme Court of the United States, is of no authority on the federal questions involved. Hertz vs. Woodmen, 218 U. S. 205.

Sam'l H. Sibley, Circuit Judge; Robert T. Ervin, U. S. District Judge; Charles B. Kennamer, U. S. District Judge.

[File endorsement omitted.]

[fol. 244] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF ALABAMA

GULF STATES PAPER CORPORATION, a Corporation, Plaintiff,

vs.

ALBERT A. CARMICHAEL, Individually and as Attorney General of the State of Alabama, et al., Defendants

DECREE—Filed December 15, 1936

This cause came on to be heard upon a motion for an interlocutory injunction and for a final decree before a Court composed of Honorable Samuel H. Sibley, Circuit Judge, Honorable C. B. Kennamer, District Judge, and Honorable Robert T. Ervin, District Judge, and was submitted upon the pleadings and upon the evidence introduced, and the argument of counsel for the parties. The Court having taken time to consider, and being now fully advised, it is considered and adjudged that the defendants and each of them in their individual and official capacities, be enjoined pending the final determination of this cause from enforcing against complainant the Act described in the petition and passed by the Legislature of the State of Alabama, approved September 14, 1936, as amended, and known as the Alabama Unemployment Compensation Law, by requiring contributions or reports thereunder or by exacting penalties, fines, taxes or imprisonment because thereof, and from doing any act by themselves or their agents or representatives in the enforcement of said Act. This injunction is to be effective upon the complainant filing a bond in the sum of Ten Thousand ($10,000) Dollars, conditioned as by the statute in this regard required.

And upon further consideration, and by way of final decree, in pursuance of the Findings of Fact and the Conclusions of Law filed herewith, it is considered and adjudged that the defendants and each of them in their individual [fol. 245] and official capacities, their agents and representatives, are perpetually enjoined from enforcing said Act against complainant in any way by requiring contributions, reports or otherwise, or by exacting fines, penalties or other

punishments because of a failure to comply with said Act, the said Act being held and declared to be unconstitutional and void because in conflict with the Fourteenth Amendment of the Constitution of the United States and of Article 1, Section 23, of the Constitution of Alabama.

This decree signed this December 15, 1936.

Sam'l H. Sibley, United States Circuit Judge; Robert T. Ervin, United States District Judge; Charles B. Kennamer, United States District Judge.

[File endorsement omitted.]

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[fol. 246] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO WRIT OF INJUNCTION—Filed January 30, 1937

It is hereby stipulated by and between counsel for Plaintiff and the Defendants in the above styled cause that the Defendants and each of them, by and through their counsel of record, accept service of the writ of injunction as ordered and decreed in the final decree in said cause of date December 15, 1936, and agree in all respects to be bound thereby until the further orders of the Court, and it is agreed that the issuance and service of any other writ or notice is hereby waived.

Albert A. Carmichael, Attorney General, State of Alabama; Chas. L. Rowe, Assistant Attorney General, State of Alabama; Peyton D. Bibb, Special Assistant of the Attorney General, State of Alabama; Nicholas E. Stallworth, First National Bank Building, Mobile, Alabama, Attorneys for [fol. 247] Appellants. Lucien D. Gardner, Jr., Birmingham, Alabama; Jos. F. Johnston, Birmingham, Alabama; Forney Johnston, Birmingham, Alabama, Solicitors for Plaintiff-Appellee. Cabaniss & Johnston, Birmingham, Alabama, of Counsel for Appellee.

[File endorsement omitted.]

[fol. 248] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed January 30, 1937

Now come the defendants, Albert A. Carmichael, individually and as Attorney General of the State of Alabama, and J. L. Kaufman, individually and as Chairman and a member of the Unemployment Compensation Commission of the State of Alabama, and Lucien C. Brown and James A. Lipscomb, each individually, and as members of said Unemployment Compensation Commission, and Bibb Graves, individually and as Governor of the State of Alabama, and feeling themselves aggrieved by the final decree of the Court entered herein, the 15th day of December, 1936, pray an appeal therefrom to the Supreme Court of the United States. The particulars wherein they consider the final decree erroneous are set forth in their assignment of errors on file and to which reference is made.

Wherefore, the premises considered, your petitioners pray that an appeal in their behalf to the Supreme Court of the United States for the correction of the errors complained of and herewith duly assigned, be allowed and granted; and that an order be had fixing the amount of bond and security to be given by these defendants as Ap-
[fol. 249] pellants and conditioned as the law directs, and they pray a reversal of said decree.

Albert A. Carmichael, Attorney General, State of Alabama; Chas. L. Rowe, Assistant Attorney General, State of Alabama; Peyton D. Bibb, Special Assistant of the Attorney General, State of Alabama; Nicholas E. Stallworth, First National Bank Building, Mobile, Alabama, Attorneys for Defendants.

[File endorsement omitted.]

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[fol. 250] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR—Filed January 30, 1937

Now come the defendants, Albert A. Carmichael, individually and as Attorney General of the State of Alabama,

and J. L. Kaufman, individually and as Chairman and a member of the Unemployment Compensation Commission of the State of Alabama, and Lucien C. Brown and James A. Lipscomb, each individually, and as members of said Unemployment Compensation Commission, and Bibb Graves, individually and as Governor of the State of Alabama, and in connection with their petition for appeal file the following assignments of error on which they will rely on their appeal to the Supreme Court of the United States from the final decision of the Three-Judge District Court entered the 15th day of December, 1936.

The Three-Judge District Court erred:

1. In not granting the defendants' motion to dismiss the bill of complaint.

2. In not dismissing the bill of complaint as prayed in defendants' motion.

3. In not acting upon the defendants' motion to dismiss [fol. 251] the bill of complaint.

4. In perpetually enjoining the defendants from enforcing the Alabama Unemployment Compensation Act against the plaintiff in any way by requiring contributions, reports or otherwise or by exacting fines, penalties or other punishments of the plaintiff because of its failure to comply with such Act.

5. In enjoining the defendants from requiring of the plaintiff the payment of the contributions and the filing of the reports required of it by the Alabama Unemployment Compensation Act.

6. In enjoining the defendants from exacting of the plaintiff the fines, penalties or other punishments provided for upon its failure to comply with the Alabama Unemployment Compensation Act.

7. In enjoining the defendants from enforcing the terms and provisions of the Alabama Unemployment Compensation Act against the plaintiff.

8. In granting an interlocutory injunction enjoining the defendants, pending the final determination of the suit, from enforcing against the plaintiff the terms, provisions and requirements of the Alabama Unemployment Compen-

sation Act by requiring of the plaintiff the contributions or reports thereunder or by exacting penalties, fines, taxes or imprisonment and from doing any act by themselves or their agents or representatives in the enforcement of said Act.

9. In holding the Alabama Unemployment Compensation Act to be unconstitutional and void because in conflict with the Fourteenth Amendment of the Constitution of the United States.

10. In holding the Alabama Unemployment Compensation Act to be unconstitutional and void because in conflict with Article 1, Section 23 of the Constitution of Alabama.

11. In holding the Alabama Unemployment Compensation Act to be unconstitutional and void as denying to the plaintiff the equal protection of the law.

12. In holding that the Alabama Unemployment Compensation Act is a denial to the plaintiff of the due process of law in that the classification of employers having eight or [fols. 252-267] more employees is entirely arbitrary.

13. In holding that the classifications of employers contained in the Alabama Unemployment Compensation Act are so arbitrary as to render the Act unconstitutional and void as a denial of due process of law to the plaintiff.

14. In holding that the plaintiff has no adequate remedy at law in the premises.

15. In not dismissing the plaintiff's bill of complaint.

16. In the rendition of the final decree in this cause filed and entered December 15, 1936.

Albert A. Carmichael, Attorney General of the State of Alabama; Chas L. Rowe, Assistant Attorney General of the State of Alabama; Peyton D. Bibb, Special Assistant of the Attorney General of the State of Alabama; Nicholas E. Stallworth, First National Bank Building, Mobile, Alabama, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 268] IN UNITED STATES DISTRICT COURT

[Title omitted]

Before the Honorables Samuel H. Sibley, Circuit Judge, and Robert T. Ervin and Chas. B. Kennamer, District Judges, Composing the Court Consisting of Three Judges under Section 380 of Title 28 of the United States Code Annotated (Judicial Code Section 266, as Amended)

ORDER ALLOWING APPEAL—Filed January 30, 1937

It appearing to the Court in the cause stated that the Defendants, Albert A. Carmichael, individually and as Attorney General of the State of Alabama, and Jacob L. Kaufman, individually and as Chairman and a member of the Unemployment Compensation Commission of the State of Alabama, and Lucien C. Brown and James A. Lipscomb, each individually, and as members of said Unemployment Compensation Commission, and Bibb Graves, individually and as Governor of the State of Alabama, have filed their petition for appeal to the Supreme Court of the United States, and have filed therewith their assignment of errors, and also their statement as to the jurisdiction of the Supreme Court of the United States as required by Rule 12 of the Supreme Court Rules, duly disclosing that the Supreme Court of the United States has jurisdiction upon appeal to review the decree in question,

It is hereby Ordered by the Court that the appeal prayed for be and the same is hereby allowed and granted to the [fols. 269-271] Supreme Court of the United States from the decree rendered in said cause on the 15th day of December, 1936, and that said Defendants give a bond with good and sufficient security in the sum of One Thousand Dollars ($1000.00). That they as Appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good.

Dated this 30 day of January, 1937.

Samuel H. Sibley, Circuit Judge; Robert T. Ervin, District Judge; Charles B. Kennamer, District Judge.

[File endorsement omitted.]

[fols. 272-274] Bond on Appeal for $1,000.00 approved and filed Jan. 30, 1937, omitted in printing.

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[fols. 275-276] Citation in usual form showing service on Lucien D. Gardner, Jr., et al., filed Jan. 30, 1937, omitted in printing.

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[fol. 277] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL—Filed January 20, 1937

The plaintiff in the above entitled case is hereby notified that the defendants appealed from the decree of the Court as rendered on the 15th day of December 1936, and that said appeal will be to the Supreme Court of the United States in accordance with the citation as issued in this case.

Albert A. Carmichael, Attorney General, State of Alabama; Chas. L. Rowe, Assistant Attorney General, State of Alabama; Peyton D. Bibb, Special Assistant of the Attorney General, of the State of Alabama; Nicholas E. Stallworth, First National Bank Building, Mobile, Alabama, Attorneys for Defendants.

[fol. 278] Service of the above notice of appeal accepted, this the 14 day of January, 1937.

Lucien D. Gardner, Jr., Birmingham, Alabama; Jos. F. Johnston, Birmingham, Alabama; Forney Johnston, Birmingham, Alabama, Attorneys for Plaintiff. Cabaniss & Johnston, Birmingham, Alabama, of Counsel for Plaintiff.

[File endorsement omitted.]

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[fol. 279] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed January 30, 1937

It is hereby stipulated and agreed by and between the parties hereto that for the purposes of the appeal which

has been allowed herein to the Supreme Court of the United States, the clerk is requested to prepare and forward to the clerk of the Supreme Court of the United States a transcript of the record on appeal which shall include only the following portions of the record:

1. The bill of complaint as last amended and substituted containing application for interlocutory and final injunction filed herein on the 6th day of November, 1936. (The original bill of complaint to be omitted.)

2. The order setting the application for an interlocutory injunction down for hearing October 26, 1936 before the Honorable Samuel H. Sibley, Circuit Judge, the Honorable [fol. 280] Robert T. Ervin, District Judge, and the Honorable Charles B. Kennamer, District Judge, filed herein on the 17th day of October, 1936.

3. Acceptance of service and waiver by defendants filed October 17, 1936.

4. The order filed October 24, 1936, resetting application for preliminary injunction down for hearing October 30, 1936.

5. The order filed herein October 29, 1936 resetting application for temporary injunction down for hearing November 18, 1936.

6. The notice of the hearing on motion for interlocutory injunction to the Honorable Bibb Graves as Governor of the State of Alabama, together with the return of service of said motion returned and filed herein on the 29th day of October, 1936.

7. The defendants' motion to dismiss the plaintiff's bill of complaint as amended, filed herein on the 7th day of November, 1936, as amended by amendment thereto filed herein on the 18th day of November, 1936.

8. The order of the court executed and filed on November 9, 1936 directing service and notice in response to the prayer of the amended bill.

9. The motion to dismiss filed on behalf of Harwell G. Davis November 16, 1936.

10. The motion to dismiss filed on behalf of Thomas B. Samford on November 16, 1936.

11. Special appearance and motion on behalf of the Attorney General of the United States filed November 16, 1936. [fol. 281] 12. The motion filed on behalf of the plaintiff on November 18, 1936 together with the court's order

thereon with regard to the service and notice provided for in the order of November 9th.

13. The answer of the defendants, and affidavit verifying it, filed herein on the 18th day of November, 1936.

14. The stipulation and agreement between the plaintiff and the defendants that without waiving the plaintiff's insistence on its application for the interlocutory injunction, this cause might also be submitted for final decree on the same pleadings and proof, the same being filed herein on the 18th day of November, 1936.

15. The order of the court entered the 18th day of November, 1936, continuing the temporary restraining order, pendente lite.

16. The statement of the evidence and the evidence therein referred to under Equity Rule 75 stipulated and agreed to between the plaintiff and defendants and the order approving the same, the same being filed herein on the 30th day of January, 1937.

17. The findings of fact and conclusions of law filed by the court herein on the 15th day of December, 1936.

18. The final decree filed by the court herein on the 15th day of December, 1936.

19. Stipulation waiving issue, service and return of service of the writ of injunction to the defendants filed herein on the 30th day of January, 1937.

[fol. 282] 20. The petition for appeal filed herein on the 30th day of January, 1937.

21. The assignment of errors accompanying the petition for appeal filed herein on the 30th day of January, 1937.

22. The statement as to the jurisdiction of the Supreme Court of the United States.

23. The order allowing the appeal and fixing the bond filed herein on the 30th day of January, 1937.

24. Service of appeal papers and acceptance of service thereof.

25. The appeal bond and the approval of the same filed herein on Jan. 30, 1937, and approved on the 6 day of February, 1937.

26. The citation on appeal and acceptance of service of same filed herein on the 30th day of January, 1937.

27. The notice of appeal and acceptance of service of the same filed herein on the 30th day of January, 1937.

28. This Præcipe and the order approving the same filed herein on the 30th day of January, 1937.

This the 30th day of January, 1937.

Albert A. Carmichael, Attorney General of the State of Alabama; Chas. L. Rowe, Assistant Attorney General of the State of Alabama; Peyton D. Bibb, Special Assistant of the Attorney General of the State of Alabama; Nicholas E. Stallworth, Mobile, Alabama, Attorneys for Defendants. Lucien D. [fol. 283] Gardner, Jr., Jos. F. Johnston, Forney Johnston, Attorneys for Plaintiff.

Counsel for Appellants, defendants, having submitted the foregoing Præcipe, and the same having been approved and stipulated by counsel for Appellee, plaintiff, the said Præcipe is hereby approved and it is ordered that the clerk transmit the original narrative of proceedings herein specified to the clerk of the Supreme Court of the United States for the purposes of the appeal in the same cause.

Ordered, this the 30 day of January, 1937.

Samuel H. Sibley, United States Circuit Judge; Robert T. Ervin, United States District Judge; Charles B. Kennamer, United States District Judge.

[File endorsement omitted.]

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[fol. 284] Clerk's certificate to foregoing transcript omitted in printing.

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[fol. 285] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF THE POINTS ON WHICH APPELLANTS INTEND TO RELY AND OF THE PARTS OF THE RECORD WHICH APPELLANTS THINK NECESSARY FOR THE CONSIDERATION THEREOF—Filed March 10, 1937.

The appellants intend to rely upon the contentions that the specially constituted District Court erred:

1. In not granting the defendants' motion to dismiss the bill of complaint.

2. In not dismissing the bill of complaint as prayed in defendants' motion.

3. In not acting upon the defendants' motion to dismiss the bill of complaint.

4. In perpetually enjoining the defendants from enforcing the Alabama Unemployment Compensation Act against the plaintiff in any way by requiring contributions reports or otherwise or by exacting fines, penalties or other punishments of the plaintiff because of its failure to comply with such Act.

5. In enjoining the defendants from requiring of the plaintiff the payment of the contributions and the filing of the reports required of it by the Alabama Unemployment Compensation Act.

[fol. 286] 6. In enjoining the defendants from exacting of the plaintiff the fines, penalties or other punishments provided for upon its failure to comply with the Alabama Unemployment Compensation Act.

7. In enjoining the defendants from enforcing the terms and provisions of the Alabama Unemployment Compensation Act against the plaintiff.

8. In granting an interlocutory injunction enjoining the defendants, pending the final determination of the suit, from enforcing against the plaintiff the terms, provisions and requirements of the Alabama Unemployment Compensation Act by requiring of the plaintiff the contributions or reports thereunder or by exacting penalties, fines, taxes or imprisonment and from doing any act by themselves or their agents or representatives in the enforcement of said Act.

9. In holding the Alabama Unemployment Compensation Act to be unconstitutional and void because in conflict with the Fourteenth Amendment of the Constitution of the United States.

10. In holding the Alabama Unemployment Compensation Act to be unconstitutional and void because in con-

flict with Article 1, Section 23, of the Constitution of Alabama.

11. In holding the Alabama Unemployment Compensation Act to be unconstitutional and void as denying to the plaintiff the equal protection of the law.

12. In holding that the Alabama Unemployment Compensation Act is a denial to the plaintiff of the due process of law in that the classification of employers having eight or more employees is entirely arbitrary.

13. In holding that the classifications of employers contained in the Alabama Unemployment Compensation Act are so arbitrary as to render the Act unconstitutional and void as a denial of due process of law to the plaintiff.

14. In holding that the plaintiff has no adequate remedy at law in the premises.

15. In not dismissing the plaintiff's bill of complaint.

16. In the rendition of the final decree in this cause filed and entered December 15, 1936.

[fol. 287] The appellants deem the entire record as filed to be necessary for the consideration of the contentions above enumerated.

Albert A. Carmichael, Attorney General of the State of Alabama; Chas. L. Rowe, Assistant Attorney General of the State of Alabama; Peyton D. Bibb, Special Assistant of the Attorney General of the State of Alabama; Nicholas E. Stallworth, First National Bank Building Mobile, Alabama, Attorneys for (Defendants) Appellants. Inge & Stallworth, Mobile, Alabama, of Counsel.

Service of a copy of the foregoing statement of points is hereby acknowledged on behalf of the appellee, this 30th day of January, 1937.

Lucien D. Gardner, Jr., Jos. F. Johnston, Forney Johnston, Attorneys for (Plaintiff) Appellee. Cabaniss & Johnston, First National Bank Bldg., Birmingham, Alabama.

[fol. 288] [File endorsement omitted.]

Endorsed on cover: Enter A. A. Carmichael. File No. 41,337. M. Alabama, D. C. U. S. Term No. 797. Albert A. Carmichael, Individually and as Attorney General of the State of Alabama, et al., appellants, vs. Gulf States Paper Corporation. Filed March 10, 1937. Term No. 797, O. T., 1936.

(8881-C)